

STATE OF IOWA

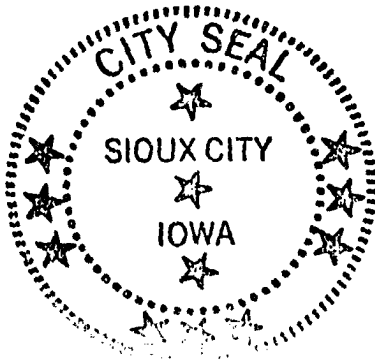
CITY OF SIOUX CITY

Woodbury County

Office of the City Clerk

I, Robert K. Padmore, City Clerk of the City of Sioux City and City Clerk of the City Council thereof, and as such, having charge of and in my possession all the records and documents pertaining to said office now remaining therein, do hereby certify that it appears from such records that the foregoing is a true and correct copy of the Resolution No. 2001-1027 adopted by the City Council of the City on the 19th day of November, 2001, upon the call of yeas and nays thereof duly had and recorded.

Dated at Sioux City, Iowa this 27th day of November, 2001



(SEAL)

ROBERT K. PADMORE
CITY CLERK

13666

Doc. No. _____
WOODBURY COUNTY, IOWA
Filed for record, indexed and delivered
to County Auditor & Recorder on

WOODBURY COUNTY, IOWA
Entered upon the transfer book and
for taxation on

JAN 16 2002

JAN 16 2002

Time 3:00 AM PM 3:26 *ch*
Auditor's & Recorder's Fee \$ _____ *pt*
PATRICK F. GILL, Auditor & Recorder
By *D. Moore* Designee

Fee \$ 10.00 Pd
PATRICK F. GILL, Auditor & Recorder
By E. Whitehouse Designee

RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH CIVIC PARTNERS FOR THE SALE AND REDEVELOPMENT OF LAND IN THE COMBINED CENTRAL SIOUX CITY - CBD URBAN RENEWAL AREA (3RD AND VIRGINIA STREETS)

WHEREAS, in furtherance of the objectives of Chapter 403, Code of Iowa, the City of Sioux City, Iowa, has undertaken a program for the redevelopment of blighted areas in the city, and in this connection has instituted the Combined Central Sioux City - CBD Urban Renewal Area; and

WHEREAS, the City invited proposals from all interested parties for the purchase of land in the urban renewal area, announced its intent to accept the proposal of Civic Partners, and did after published notice and hearing accept the proposal of Civic Partners pursuant to Resolution No. 2001-0684 passed and approved August 13, 2001 for the sale and redevelopment of the following described property in the Combined Central Sioux City - CBD Urban Renewal Area:

Lots 1 to 9 inclusive, and the North 150 feet of the vacated North/South alley, all in Block 22, Middle Sioux City, in the county of Woodbury and State of Iowa; and

Lots 1 to 12 inclusive, and the vacated North/South alley, and the vacated East/West alley, all in Block 23, Middle Sioux City, in the County of Woodbury and State of Iowa; and

The North 150 feet of vacated Jennings Street lying between said Blocks 22 and 23, Middle Sioux City, in the County of Woodbury and State of Iowa; and

WHEREAS, a Contract for the Sale of Land for Private Redevelopment ("Development Agreement") has been prepared pursuant to the terms of said proposal, a copy of which Development Agreement is attached hereto and by this reference incorporated herein; and

WHEREAS, said Development Agreement should be approved as to form and content.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SIOUX CITY, that the Development Agreement between Civic Partners and the City of Sioux City, Iowa, for the sale and redevelopment of the real estate described in the preamble hereof, be and the same is hereby approved as to form and content.

BE IT FURTHER RESOLVED that the Mayor and City Clerk be and they are hereby authorized and directed to execute said Development Agreement for and on behalf of the City of Sioux City, Iowa.

BE IT FURTHER RESOLVED that upon receipt of the consideration fixed in said Development Agreement and upon the satisfaction of the conditions set forth therein the Mayor and City Clerk are authorized and directed to execute and deliver to Civic Partners a standard form City Deed or Deeds conveying the real estate described in the preamble hereof to Civic Partners.

PASSED AND APPROVED: November 19, 2001


Martin D. Dougherty, Mayor

ATTEST: 
Robert K. Padmore, City Clerk

ROLL 523 IMAGE 1780

CONTRACT FOR SALE OF LAND
FOR PRIVATE REDEVELOPMENT IN THE
COMBINED CENTRAL SIOUX CITY-CBD URBAN
RENEWAL AREA
BY AND BETWEEN
THE CITY OF SIOUX CITY, IOWA
and
CIVIC PARTNERS SIOUX CITY LLC

EXHIBITS -

Exhibit A:	Form of Deed
Exhibit B:	Developer's Bid Proposal
Exhibit C:	Description of Property
Exhibit D:	Site Plan
Exhibit E:	Assessment Agreement
Exhibit F:	Loan Documents
Exhibit G:	Description of Development

INTRODUCTION

This Agreement, consisting of this Introduction, Part I and Part II and Exhibits "A", "B", "C", "D", "E", "F" and "G" to Part I attached hereto and made a part hereof (which are together hereinafter called "Agreement"), made on or as of the 19th day of November, 2001, by and between the City of Sioux City, Iowa, an Iowa Municipal Corporation, (which, together with any successor public body or officer hereafter designated by or pursuant to law, is hereinafter called "City"), acting pursuant to Chapter 403 of the Code of Iowa which is in force on the date of execution of this agreement, (hereinafter called "Urban Renewal Act"), and having its office at City Hall, 405 Sixth Street, in the City of Sioux City, and State of Iowa, and Civic Partners Sioux City LLC, an Iowa limited liability company (hereinafter called "Redeveloper") and having an office for the transaction of business at 3961 MacArthur Boulevard, Suite 212 in the City of Newport Beach, and State of California, WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Law, the City proposes to undertake a program for the clearance and reconstruction or rehabilitation of slum and blighted areas in the City, and in this connection is engaged in establishing or has heretofore established an urban renewal project known as the "Combined Central Sioux City-CBD Urban Renewal Project" (hereinafter called the "Urban Renewal Project") in an area (hereinafter called "Urban Renewal Project Area") located in the City; and

WHEREAS, as of the date of this Agreement, there is under preparation or has heretofore been prepared by the City an urban renewal plan for the Urban Renewal Project consisting of the Urban Renewal Plan and amendments thereto, (which plan, as so amended, and as it may hereafter be further amended from time to time pursuant to law, and as so constituted from time to time, is, unless otherwise indicated by the context, hereinafter called "Urban Renewal Plan"); and

WHEREAS, the City is the owner of or will acquire the property in the Urban Renewal Project areas shown generally on Exhibit "C" (the "Property"); and

WHEREAS the City has offered to sell said Property and the Redeveloper is willing to purchase said Property and to redevelop the Property for and in accordance with this Agreement (the "Project"); and

WHEREAS, the City believes that the redevelopment of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Iowa and local laws and requirements under which the Project has been undertaken.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

CONTRACT FOR SALE OF LAND FOR PRIVATE REDEVELOPMENT

PART I

SECTION 1: Sale and purchase price. In consideration of the Redeveloper constructing improvements, as described in this Agreement, on the Property and paying the City as follows the City will convey the Property to the Redeveloper in accordance with this Agreement.

- (a) The City has acquired at its own cost the parcels described in "Exhibit C" of Part I for the Redeveloper (the "Parcels," referred to individually a "Parcel") which Parcels are known as Parcels 1 and 2 and are described on "Exhibit G of Part I". Parcels 1 and 2 are also collectively referred to herein as the "Property." The City shall vacate and convey the Parcels to the Redeveloper and the Redeveloper shall pay to the City the purchase price (hereinafter called "Purchase Price") as provided herein.
- (b) The Purchase Price for Parcel 1 shall be \$10.00. The Purchase Price for Parcel 2 shall be \$250,000.00.
- (c) Upon payment of the Purchase Price for a Parcel which shall be in cash or certified check, simultaneous with delivery of the Deed for such Parcel to the Redeveloper, and for other good and valuable consideration, all subject to the terms and conditions of this Agreement, the City shall sell to the Redeveloper and the Redeveloper shall purchase from the City such Parcel.
- (d) The City shall not, however, convey Parcel 1 or Parcel 2 to the Redeveloper until such time as:
 - (1) Soil tests, as described in Section 3 hereof, have been performed for the Property and the results are satisfactory to both the City and the Redeveloper; and
 - (2) The Redeveloper has approved the condition of title to the Property pursuant to Section 2(d) hereof.

SECTION 2: Conveyance of property.

- (a) Form of deed. The City shall convey to the Redeveloper title to each Parcel by City Deeds (hereinafter called "Deed" or "Deeds") substantially in the form attached hereto as "Exhibit A of Part I" and by this reference made a part hereof. Such conveyance and title shall be subject to the conditions, covenants, and restrictions set forth or referred to elsewhere in this Agreement; and to all conditions, covenants, restrictions, and requirements of the Urban Renewal Plan. Delivery of the Deeds shall not abrogate the other responsibilities and covenants of the parties under this Agreement. Such conveyance shall further be subject to the City retaining a part of the Property for the construction of Fourth Street abutting the Property to the north. The portion of the Property which shall comprise Fourth Street shall be established by a city survey.
- (b) Time and place for conveyance - Parcel 1. The City shall convey Parcel 1 to the Redeveloper as soon as reasonably possible. Such conveyance shall occur within ten (10) days after satisfaction of all of the following conditions:

- (1) The City has approved the Redeveloper's proposal for financing the development of Parcel 1 as provided in Section 303 hereof;
- (2) The City has approved the Final Construction and Site Plans for the development of Parcel 1 as provided in Section 301 hereof and the Redeveloper has obtained site plan approval for the Project through the City's Site Plan Review process under the site plan ordinance; and
- (3) The Redeveloper has approved the condition of title to the Property as provided in subsection (c) below and the condition of the soils of the Property as provided in Section 3 below.

Upon satisfaction of the above conditions, the City shall immediately deliver to the Redeveloper notice of the conveyance date. The Redeveloper shall pay the purchase price and shall take title and possession of Parcel 1 and the City shall deliver the Deed and possession of Parcel 1 on the conveyance date.

(c) Earnest Money/Time and place for conveyance – Parcel 2.

Upon commencement of construction of the cinema/retail development on Parcel 1, the Redeveloper agrees to pay to the City twenty-five thousand dollars (\$25,000) as earnest money for the purchase of Parcel 2 (the "Earnest Money"). The Earnest Money will be applied toward the Purchase Price for Parcel 2 and will be nonrefundable, except in the event of a termination of this Agreement, or of the Redeveloper's right to purchase or develop Parcel 2, due to a default of the City under this Agreement.

The City and the Redeveloper agree that it is currently the intent and desire of the parties to renovate the existing Pierce Warehouse building on Parcel 2 into a hotel in order to preserve the historic nature of the building and of downtown Sioux City. Due to the complexities involved in renovating an existing historical building, the parties understand that it will take longer to develop a hotel in the existing building than it would to demolish the existing building and construct a new hotel. Additionally, the parties acknowledge that it is critical to the Redeveloper that the City assist the Redeveloper by providing favorable, low-rate, long term financing for a portion of the cost of developing of Parcel 2. This financing may need to be tax exempt financing issued through the City/Redevelopment Agency.

Based upon the foregoing, the Redeveloper shall have until one (1) year following the opening of the cinema on Parcel 1 to negotiate a definitive agreement with a hotel operator for Parcel 2 and to reach agreement with the City on the financing and development terms for Parcel 2, including the provision of the financing described above. This deadline can be extended by the City and the Redeveloper as necessary to complete negotiations relative to the development of Parcel 2; provided, this deadline will not be extended beyond September 30, 2004, unless the City requires additional time. Additionally, if the City is unable to assist the Redeveloper by providing the financing described above, the City and the Redeveloper agree to negotiate in good faith to make such reasonably necessary amendments to this Agreement and/or to enter into an amendment or supplement to this

Agreement to extend the development time frames and make other changes as may be reasonably necessary to make the development of Parcel 2 feasible.

The City shall convey Parcel 2 to the Redeveloper following execution of an amendment or supplement to this Agreement (defined in Section 8(g)) by the City and the Redeveloper memorializing the agreements reached between the parties pursuant to the preceding paragraph, including the method of financing, the time frame for conveyance of Parcel 2 and for the development of Parcel 2, and such other matters as the City and the Redeveloper may determine. In no event will the date for the conveyance of Parcel 2 be later than September 30, 2004 unless such deadline is extended by the parties pursuant to the terms of this Section 2(c).

- (d) Title. The City shall convey to the Redeveloper good and marketable fee simple title to the Property free and clear of all liens, claims, encumbrances, assessments, leases and taxes except those title exceptions approved by the Redeveloper as described below. Title to the Property shall be conveyed free of any possession or right of possession by any person except that of the Redeveloper and the easements of record approved by the Redeveloper. As soon as reasonably possible, the City shall deliver to the Redeveloper an abstract of title to the Property. The Redeveloper shall notify the City in writing of any objections to title within thirty (30) days of delivery of the abstract. The City shall take all steps reasonably necessary to cure defects in title within thirty (30) days of receipt of the Redeveloper's objections. In the event the City is unable to cure any of the Redeveloper's objections to the title, the City shall provide notice to the Redeveloper of which objections the City is unable to cure. The Redeveloper shall have thirty (30) days following receipt of the City's notice to determine whether Redeveloper will reasonably be able to proceed with the redevelopment of the Property with the title defect. If the Redeveloper determines that it cannot reasonably proceed with the redevelopment of the Property with the title defect, the Redeveloper may terminate this Agreement by delivering notice to the City within such thirty (30) day period. The Redeveloper shall be entitled to ownership of the abstract only on or after the delivery of title and possession of the Property.
- (e) Apportionment of current taxes The City shall pay a pro rata share of taxes (real and personal), based on the assessed value of the land and improvements included within the applicable Parcel for the fiscal year of closing on that Parcel (July 1 to June 30), which are due and payable in the next subsequent fiscal year, and all unpaid taxes for prior years. To determine the pro rata share of such current fiscal year's taxes payable to the next subsequent fiscal year by the respective parties, the following procedure shall be used:
- (1) The most recent real estate taxes, based on the assessed value of the land, shall be added together and then divided by 365 to determine the per day figure; and
 - (2) The total number of days in said fiscal year commencing with the 1st day of July and ending with the day of closing shall be determined and said number multiplied by the per day tax figure and the product shall be the portion of the taxes payable by the City; and
 - (3) The remaining portion of the taxes for said fiscal year and all subsequent taxes shall be the responsibility of the Redeveloper.

The City shall be credited towards its pro rata share all of those taxes which the City shall have caused to be paid as a result of the condemnation of any of the property. The Redeveloper shall thereafter be responsible for payment of all such taxes as they become due and owing to the taxing authorities. Upon written request of the Redeveloper, the apportionment of such taxes shall be subject to final adjustment within thirty (30) days after the date of the actual amount of such current taxes is ascertained.

- (f) Apportionment of special assessments. The City shall pay all special assessments for an applicable Parcel, which are a lien on the applicable Parcel as of the date of closing. All other special assessments or installments thereof shall be paid by the Redeveloper.
- (g) Recordation of deed. Following closing on a Parcel, the City shall promptly file the Deed for recordation among the land records of the Woodbury County Recorder's Office. The City shall pay all costs (including the cost of the State documentary stamp tax, if any, on the Deed) for so recording the Deed and shall provide the Redeveloper with a copy imprinted with the date, time, book and page numbers of recordation.

SECTION 3: Soils Testing. No later than sixty (60) days prior to conveyance by the City of any Parcel of the Property to the Redeveloper, the City shall provide the Redeveloper with a level I environmental report (the "Environmental Report") for the Property. During the same time frame, the Redeveloper may conduct or cause to be conducted any and all soils tests, engineering studies, other environmental audits, and any other tests or analyses of the Property required by the Redeveloper at its sole and absolute discretion to determine the presence of uncompacted fill, the condition of the soil, the geology, seismology, hydrology or other similar matters on, under or affecting the Property, the condition of any buildings or improvements located thereon, the presence or absence of any hazardous or toxic substances or materials, and the suitability of the Property for the Redeveloper's contemplated use. Within forty-five (45) days following receipt by the Redeveloper of the Environmental Report, the Redeveloper shall notify the City if such soil conditions or other conditions of the Property are determined by the Redeveloper, in its sole and absolute discretion, to make the development of the Project economically infeasible, or if the Redeveloper cannot determine with a degree of certainty the costs to remediate any soil or groundwater contamination, the Redeveloper may disapprove the soil conditions of the Property. In such event, the City and the Redeveloper will sit down and negotiate in good faith alternative proposals for the development of the Property for a period of sixty (60) days. If the parties are unable to reach a mutually agreeable decision regarding the Project, then this Agreement may be terminated by either the City or the Redeveloper upon written notice to the other party. The City acknowledges that it may not be possible to ultimately determine soils conditions until demolition and/or construction commence on a Parcel. If the Redeveloper has previously accepted the condition of a Parcel, but subsequently discovers a soils condition which, in the Redeveloper's opinion, makes development of that Parcel economically infeasible, the parties agree to negotiate, in good faith, alternative proposals for the Project.

SECTION 4: Time for commencement and completion of improvements. The construction of the improvements on Parcel 1 shall be commenced in any event on or before June 1, 2002, and except as otherwise provided in this Agreement, shall be completed on or before June 1, 2003. For the purposes of this Section 4, "commenced" shall mean the commencement of any on-site or off-site work in connection with the development of Parcel 1.

SECTION 5: Time for certain other actions. The City and the Redeveloper agree that the Project will be completed in several phases as described in Exhibit G. The time schedules set forth in Section 4 above and in this Section 5 apply only to the development of Parcel 1. The City and the Redeveloper agree to enter into an amendment or supplement to this Agreement (defined in Section 8(g) hereof) which will address the scheduling and development of the future phase(s) of the Project.

- (a) Time for site plan review pre-application conference. The Redeveloper shall participate in the pre-application conference of the Site Plan Review process required by City ordinance by no later than sixty (60) days after approval of this agreement by the City. The Redeveloper shall contact the Planning Department of the City to schedule such conference.
- (b) Time for submission of construction plans. The Redeveloper shall submit its "Construction Plans" (as defined in Section 301 hereof) to the City by no later than 120 days after approval of the Site Plan pursuant to subsection (a) above.
- (c) Time for city action on construction plans. Within fourteen (14) days of submission of the Construction Plans or corrected Construction Plans by the Redeveloper as provided in subsections (b) and (d) of this section, the City shall approve or reject such plans as provided for in accordance with the provisions of Section 301 hereof. In the case of an initial submission of preliminary Construction Plans by the Redeveloper, the City's approval of the same shall be contingent upon its approval of Final Construction Plans. The Redeveloper shall be required to submit its Final Construction Plans within thirty (30) days of the contingent approval of Preliminary Construction Plans. Such Final Construction Plans shall be subject to the approval processes set forth in subsections (c) through (f) of this section.
- (d) Time for submission of corrected construction plans. Except as provided in subsection (e) of this section, the time within which the Redeveloper shall submit any new or corrected Construction Plans as provided for in Section 301 hereof shall be not later than fifteen (15) days after the date the Redeveloper receives written notice from the City of the City's rejection of the Construction Plans referred to in the latest such notice.
- (e) Maximum time for approved construction plans. In any event, the time by which the Redeveloper shall submit Construction Plans which conform to the requirements of Section 301 hereof and are approved by the City, shall be not later than 60 days after the time stated in Section 5(b) above.
- (f) Time for City action on change in approved construction plans. The time within which the City may reject any change in the approved Construction Plans, as provided in Section 302 hereof, shall be thirty (30) days after the date of the City's receipt of notice of such change.
- (g) Time for submission of evidence of equity capital and mortgage financing. The time for which the Redeveloper shall submit to the City evidence as to equity capital and any necessary mortgage financing, as provided in Section 303 hereof, shall be not later than 120 days after the approval of this Agreement by the City.

SECTION 6: Period of duration of covenant on use. The Covenant pertaining to the use of the Property, set forth in Section 401 hereof, shall remain in effect for each Parcel for a period of twenty-one (21) years from the date of the Deed for that Parcel.

SECTION 7: Notices and demands. A notice, demand, or other communication under this agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, as follows:

- (i) In the case of the Redeveloper, is addressed to or delivered personally to the Redeveloper at:

Civic Partners Sioux City LLC
Attn. Steven P. Semingson
3961 MacArthur Boulevard
Suite 212
Newport Beach, CA 92660

With a copy to:

L. Edward Miller, Esq.
Givens Pursley LLP
277 N. 6th Street, Suite 200
Boise, ID 83702

With a copy to:

Charles M. Koosmann, AIA
8 Afton Coulee Ridge
Afton, MN 55001

- (ii) In the case of the City, is addressed to or delivered personally to:

City Manager, City of Sioux City, Iowa
405 Sixth Street
P.O. Box 447
Sioux City, Iowa 51102-0447

or at such other address, department, or individual with respect to either such party as that party may, from time-to-time, designate in writing and forward to the other as provided in this Section.

SECTION 8: Special provisions.

- (a) Type of development The City and Redeveloper agree that the minimum improvements to be constructed on Parcel 1 by the Redeveloper shall include:

1. Site utilities (including the sanitary sewer, storm sewer and water service lines from City mains);
2. The cinema/retail development on Parcel 1, as described on Exhibit G; and
3. Landscaping.

The foregoing construction shall be in accordance with the Site Plan attached hereto as "Exhibit F of Part I", or such site plan as may hereafter be approved by the City.

- (b) Nonapplicability of Iowa Code § 614.24. The Redeveloper agrees on behalf of itself and its successors and assigns that the City may bring an action based upon any claim arising or existing by reason of any term or provision of the Deed provided for herein, the conveyance of this Property without regard to the lapse of time and/or any term or provision of this Agreement reserving or providing for any reversion, reverted interests or use restrictions into and on the Property without complying with the requirements of Iowa Code § 614.24 that the City periodically record or re-record such reversions, reverted interests or use restrictions, and the Redeveloper agrees that neither it or its successors nor assigns will assert the City's failure to comply with such § 614.24 as a defense to any such action.
- (c) Required terms the Redeveloper must include in any conveyance of its interest. The Redeveloper shall refer to and incorporate the terms, conditions, restrictions, and requirements of the Deed provided for herein, of the Urban Renewal Plan, and of this Agreement in any deed, will, conveyances or contract conveying part or all of its interest in the Property, shall provide therein that the City can enforce the terms, conditions, restrictions, and requirements of such Deed, Urban Renewal Plan and this Agreement against the Redeveloper's successors or assigns to the same extent it could against the Redeveloper; and shall indemnify the City for any damages, including attorney fees and the costs of litigation caused or occasioned by its failure to comply with this subsection of the Agreement.
- (d) Tax Increment Financing. The Redeveloper understands that it shall be necessary for the City to utilize tax increment revenues from the project area to finance any or all of the work to be performed by the City under this Agreement. The Redeveloper further agrees that in order for the City to finance its portion of the project, Redeveloper shall hereby establish minimum actual values of the land and completed improvements which will enable the City to fund its portion of the project through tax increment financing. Such minimum actual land and improvements value for Parcel 1 (theater portion) shall be: \$3,000,000 effective January 1, 2003, shall increase by \$3,300,000 as of January 1, 2004, and shall further increase by \$180,000 each year commencing January 1, 2005, and for the fourteen years thereafter for a total in the seventeenth year of \$9,000,000. The minimum actual land and improvements value for Parcel 1 (commercial portion) shall be: \$900,000 effective January 1, 2003, shall increase by \$900,000 as of January 1, 2004, and such total value of \$1,800,000 shall be in effect for the next fifteen years. The Redeveloper shall not apply for tax abatement pursuant to Chapter 404, Code of Iowa, during such period as the City shall have outstanding its bonds necessary for the financing of the City's portion of the Project, except to the extent the assessed value of the land and improvements exceeds the values set forth above. The Redeveloper shall enter into an assessment agreement with the City in substantially the same form attached hereto as "Exhibit E of Part I" (the "Assessment Agreement").
- (e) Right of Entry. Pursuant to the authority granted the City in subsection 3 of § 403.6, Code of Iowa, the Redeveloper shall have the right as an agent of the City to enter into any building or property within the proposed Project area in order to make inspections, surveys,

soundings or test borings. Such right shall be afforded the Redeveloper for a 180 day period commencing with the execution of this Agreement.

- (f) The City's Obligations. The following is a summary of the City's obligations with respect to the financing of Phase I of the Project. The City and the Redeveloper will agree on the City's obligations with respect to Phase II and future phases, if any, in an amendment or supplement to this Agreement.
- (1) The City hereby agrees to loan to the Redeveloper \$1,980,000 for the construction of improvements to the Property. The loan will have a 30-year amortization and will accrue interest at a fixed rate of 6.33%. The Redeveloper will make monthly interest and principal payments to the City. The Redeveloper will make additional payments to the City comprised of fifty percent (50%) of the percentage rent received by the Redeveloper from the operator of the cinema on Parcel 1, as and when such payments are received by the Redeveloper. One-half (1/2) of each such additional payment made by the Redeveloper on the loan will be allocated to additional interest and the remaining one-half (1/2) of the payment amount will be applied as accelerated principal payments. The remaining balance of the principal and all due and unpaid interest will be due and payable as a balloon payment ten (10) years after the date of the loan. A preliminary draft of the loan documents is attached hereto as Exhibit "F." The parties agree that the documents are still subject to finalization and that modifications may be necessary to satisfy the Redeveloper's first mortgage holder or otherwise. This loan will be subordinate to a first mortgage on Parcel 1 and, following completion of the improvements on Parcel 1, will be assignable by the Redeveloper and assumable by the subsequent owner in connection with the sale of Parcel 1 by the Redeveloper. Such loan shall not be subject to a prepayment penalty.
 - (2) The City will finance with tax increment and pay to the Redeveloper an amount not to exceed \$2,435,000 in proceeds for the Redeveloper's use in construction of the first phase of the Project. If the Developer obtains conventional financing at less than 8% interest and/or an amount greater than \$5.625 million, the benefit of the lower interest rate and/or higher proceeds shall be used to reduce the TIF grant or increase the interest payment on the City loan.
 - (3) The City agrees to provide a debt service guarantee in an amount not to exceed \$300,000.00 per year to the permanent financing first mortgage holder for Parcel 1. The guarantee will be effective for a period of fifteen (15) years from the date the Redeveloper obtains permanent financing secured by a first mortgage for Parcel 1. If the City makes payment under this section, the City will provide the Redeveloper with notice of such payment and the opportunity to cure. If, one (1) year thereafter, the City shall be caused to make any payment under this Section, the City, at its sole discretion, may consider its payments under the guarantee an act of default by the Redeveloper and may proceed as provided in Part II, Section 704. The City payments under the guarantee shall be added to the principal of the City loan to the Redeveloper under Section 8(f)(1).
 - (4) The City acknowledges that the monies to be paid to the Redeveloper pursuant to subsections (1) and (2) above will be needed by the Redeveloper for the

construction of the development on Parcel 1. Payment of the amounts described in subparagraphs (1) and (2) of this Section shall be made to the Redeveloper in conjunction with the Redeveloper's other capitalization, as a percentage of the cost. The City and the Redeveloper will work together to establish a specific funding schedule for the City's obligations which is consistent with this Section 8(f).

- (5) The City shall provide and pay for the design and construction of Fourth Street between Jones and Virginia Streets as shown in Exhibit D or any subsequent site plan to be approved by the City, together with all other public improvements which are to be completed in connection with Fourth Street, including, but not limited to, sidewalks and historic lighting. Such street and associated public improvements shall be completed on or before June 1, 2003.
- (g) The Project. The Project is described in the Description of Development attached hereto as Exhibit G. Certain elements of this Agreement remain to be fully and finally determined and agreed to between the City and the Redeveloper. These elements include, for instance, the financing and timing of construction for Parcel 2 and future phases of the Project, if any, the exact location and scope of infrastructure improvements, necessary easements and licenses, a possible reciprocal easements and access agreement and common area maintenance agreement, and other matters that must be addressed on an on-going phase by phase basis as detailed planning and development of the Project proceeds. The parties shall agree in writing on these elements in an amendment or supplement to this Agreement, during the course of this Agreement. The parties shall act cooperatively and reasonably with each other in executing any such amendments or supplements. All such amendments or supplements to this Agreement shall be consistent with the terms of this Agreement unless otherwise mutually agreed upon.
- (h) The City's Parking Commitment. The City has allocated certain funds for the rehabilitation or replacement of an existing parking structure shown as Ramp A on the preliminary Site Plan. In the event the Ramp A structure is decommissioned, and the City does not rehabilitate or replace the structure, the City shall provide an additional four hundred and sixty (460) parking spaces within three blocks of Ramp A and the Property. This parking may be provided on Parcel 3, as provided in subsection 8(i) below, or otherwise.
- (i) Parcel 3 Potential Parking/Mixed-Use Development. The City and the Redeveloper agree that there may be a need for additional parking to serve the uses on Parcels 1 and 2 and the surrounding neighborhood. The City and the Redeveloper have designated the property shown as Parcel 3 on the Site Plan as a potential site for structured parking and additional mixed use development. The Redeveloper shall have the exclusive right to develop Parcel 3 so long as the Redeveloper and the City enter into a definitive agreement regarding the development on Parcel 3 before the date which is one (1) year after the opening of the cinema on Parcel 1.
- (j) Housing Development. The City acknowledges that the Redeveloper intends to pursue opportunities for residential development in the downtown Sioux City area. The City acknowledges that so long as the City is not obligated to acquire or convey property to the Redeveloper for such development, that the Redeveloper will not be subject to a competitive bidding process to be selected as the exclusive developer for such a residential development.

ROLL 523 IMAGE 1792

SECTION 9: Incorporation of the construction plans into agreement: recordation

- (a) The construction plans, drawings, specifications and related documents as finally approved by the City pursuant to Section 301 hereof, and any amendments thereto, as finally approved by the City pursuant to Section 302 hereof, shall be incorporated into this Agreement as amendments hereto effective as of the date of such approvals. This Agreement and the following documents:
- (1) The City Council Resolution Offering the Property and Setting the Terms and Conditions for such Offering, Resolution No. 2000-9096, dated 5-8-2000, including all exhibits and attachments thereto;
 - (2) The Redeveloper's Bid Proposal in its entirety;
 - (3) The approved Construction Plans and any approved amendments thereto;
 - (4) The Resolution approving the sale of the property and approving this Agreement, Resolution No. 2001-1027, dated 11-19-2001, including all exhibits and attachments thereto;

shall be construed together and in harmony with one another in any interpretation of the entire agreement of the parties. A copy of all such documents shall be placed on permanent file in the Office of the City Clerk, City Hall, Sioux City, Iowa.

The Redeveloper understands and acknowledges that this Resolution has not been adopted as of the date the Redeveloper executed this contract and hereby agrees and intends that the Resolution referred to hereby is that Resolution hereinafter formally adopted by the City by which it offers the Property for redevelopment as an Urban Renewal Project in accordance with the Urban Renewal Act.

- (b) This Agreement is hereby incorporated by reference in the Deed conveying the Property. The City shall immediately cause this Agreement in its entirety to be recorded at the Redeveloper's expense in the Woodbury County Recorder's Office (except the approved Construction Plans and any amendments thereto) and shall provide the City with a copy imprinted with the date, time, book and page numbers of recordation.

SECTION 10: Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

SECTION 11: Other Public Development. The City hereby expresses its intent to encourage the redevelopment of downtown Sioux City, and in particular, to encourage the development of other public facilities in the downtown area of the City. The City also expresses its interest to have entertainment facilities, such as large cinemas, theaters, etc., developed only in the downtown area of Sioux City.

SECTION 12: Governing Law. This Agreement shall be governed by the laws of the State of Iowa. In the event any provision of this Agreement is determined to be in violation of Iowa law, the parties agree to amend this Agreement to the minimum extent necessary to conform the provisions to Iowa law, working to keep the original intent of the Agreement unchanged.

SECTION 13: Amendments. The Redeveloper and the City agree to mutually consider reasonable requests for amendments to this Agreement which may be made by any of the parties hereto, lending institutions, or bond counsel or financial consultants to the City, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. Any requests made pursuant to this Section 13 shall be made in writing. Any amendments to this Agreement must be made in writing and signed by both parties.

SECTION 14. Good Faith and Cooperation and Approvals. It is agreed by the City and the Redeveloper that it is in their best interests and in the best interests of the public that the Property be developed as herein agreed, and, to that end, the parties shall in all instances cooperate and act in good faith in compliance with all of the terms, covenants, and conditions of this Agreement and shall deal fairly with each other. Except as otherwise provided for herein to the contrary, neither the City nor the Redeveloper shall unreasonably withhold or delay any approvals or consents required by it to be given as provided herein, or to effect the purposes of this Agreement. The standard for determining whether an action, a delay in action or a failure to act may be deemed "reasonable" or "unreasonable" for purposes of this covenant shall be that of a reasonable and experienced person engaged in a commercial real property development or transaction.

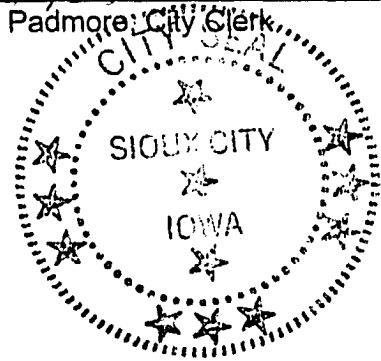
SECTION 15. No Third-Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of the City and the Redeveloper and their successors and assigns, and not for the benefit of any third person; nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person except for provisions expressly for the benefit of a mortgagee of the Redeveloper or its successors and assigns.

SECTION 16. Dispute Resolution. The parties agree that any disputes arising out of a breach of this Agreement shall be submitted to JAMS, or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or 45 days after the date of filing the written request for mediation, whichever occurs first. The mediation may continue after the commencement of arbitration if the parties so desire. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case. The provisions of this clause may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys fees, to be paid by the party against whom enforcement is ordered.

IN WITNESS WHEREOF, the City and the Redeveloper have caused this Agreement to be duly executed as of the day first above written.

CIVIC PARTNERS SIOUX CITY, LLC,
an Iowa limited liability company
By: [Signature]
J. Scott Clements, Authorized Representative

CITY OF SIOUX CITY, IOWA
By: [Signature]
Martin J. Dougherty, Mayor
By: [Signature]
Robert K. Padmore, City Clerk



STATE OF IOWA)
 :SS
COUNTY OF WOODBURY)

BE IT REMEMBERED, on this 19th day of November, 2001, before me the undersigned, a Notary Public in and for Woodbury County, personally appeared Martin J. Dougherty, and Robert K. Padmore, to me personally known, who, being by me duly sworn, did say that they are Mayor and City Clerk, respectively, of the City of Sioux City, Iowa; that the seal affixed hereto is the seal of the City of Sioux City, Iowa; that the said instrument was signed and sealed on behalf of said City of Sioux City, Iowa, and that the said Martin J. Dougherty and Robert K. Padmore acknowledged the execution of said instrument to be the voluntary act and deed of said City of Sioux City, Iowa, by it and by them voluntarily executed.

[Signature]
NOTARY PUBLIC IN AND FOR WOODBURY COUNTY

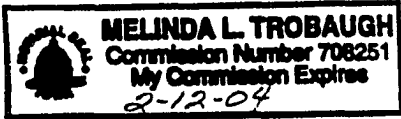


STATE OF IOWA)
 : ss.
COUNTY OF WOODBURY)

On this 19th day of November, 2001, before me, the undersigned a Notary Public in and for said County and State, personally appeared J. Scott Clements, to me personally known, who being by me duly sworn, did say that he is the Authorized Representative, of said limited liability company executing the within and foregoing instrument, that no seal has been procured by the said limited liability company; that said instrument was signed on behalf of said limited liability company by authority of its Manager; and that the said J. Scott Clements as such Authorized Representative acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it and by them voluntarily executed.

(SEAL)

Melinda L Trobaugh
NOTARY PUBLIC IN AND FOR WOODBURY COUNTY



"EXHIBIT A OF PART I"

KNOW ALL MEN BY THESE PRESENTS:

That the City of Sioux City, Iowa, a municipal corporation, of the County of Woodbury, and the State of Iowa, by its Mayor thereunto duly authorized, as hereinafter set forth, in consideration of the sum of _____ dollars (\$_____), in hand paid by _____, of the County of Woodbury and State of Iowa, does hereby release, remise, convey and quitclaim unto the said _____, all its right, title and interest in and to the following described premises situated in the County of Woodbury and State of Iowa, to wit:

It is specifically agreed that this Deed is subject to all of the terms, provisions, covenants, conditions and restrictions (including, but not limited to, the Grantor's right to re-entry contained in Section 704 thereof) contained in a certain Redevelopment Agreement entitled "Contract for Sale of Land for Private Redevelopment, Combined Central Sioux City - CBD Urban Renewal Project," executed by the Grantor and Grantee herein dated _____, 2001 which is on file in the Office of the Clerk of the City of Sioux City, Iowa, and which is recorded in the records of the Recorder of Woodbury County, Iowa, said Redevelopment Agreement being incorporated herein by this reference; and

It is specifically agreed that this Deed is also subject to all the terms, provisions, covenants, conditions and restrictions contained in the Official Urban Renewal Plan, as revised, amended, and modified and adopted by the City of Sioux City, Iowa, for Combined Central Sioux City - CBD Urban Renewal Project which is on file in the Office of the City Clerk of the City of Sioux City, Iowa, and which is recorded in the records of the Recorder of Woodbury County, Iowa, said Urban Renewal Plan, as revised, amended and modified, being incorporated herein by this reference; and

It is specifically agreed that all the terms, provisions, covenants, conditions and restrictions contained in both said Urban Renewal Plan as amended and modified, and said Redevelopment Agreement, shall be and are hereby declared to be covenants running with the land, enforceable as therein set out or otherwise by the City of Sioux City, Iowa, regardless of whether or not title to all the land in the said Combined Central Sioux City - CBD Urban Renewal Project area may have been transferred to private parties. Such agreements and covenants shall run in favor of the Grantor, for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Grantor has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate.

This Deed shall not be deemed to affect or impair any of the provisions or covenants of said agreement.

This Deed is executed under and by virtue of the authority vested in the Mayor of Sioux City, Iowa, under the provisions of a certain Resolution No. _____, duly passed and approved on the _____ day of _____, 2001, under the provision of which and in accordance herewith, this Deed is executed.

IN WITNESS WHEREOF, the City of Sioux City, Iowa, has caused these Presents to be signed by its Mayor and the seal of said City duly attested by the City Clerk hereunto affixed this _____ day of _____, 2001.

Martin J. Dougherty, Mayor

Attest: _____
Robert K. Padmore, City Clerk

STATE OF IOWA)
 :SS
COUNTY OF WOODBURY)

On this _____ day of _____, 2001, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally appeared Martin J. Dougherty, Mayor of the City of Sioux City, Iowa, and Robert K. Padmore, City Clerk of said City, each being to me personally known to be the identical persons and officers named in the foregoing instrument, who executed the same under and by virtue of the authority vested in them by the City Council of said City, and each for himself acknowledged the execution thereof to be his voluntary act and deed for the purposes herein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal at Sioux City, Iowa, the day and year above written.

NOTARY PUBLIC IN AND FOR WOODBURY COUNTY



June 13, 2000

Mr. Roger J. Caudron
Community Development Director
City of Sioux City
405 Sixth Street
Sioux City, Iowa 51101

**Re: Response to Request for Proposals
Sioux City Convention Center Area Redevelopment Project**

Dear Mr. Caudron:

The development team organized by Civic Partners appreciates the opportunity to submit the following Response to Request for Proposals for the Sioux City Convention Center Area Redevelopment Project.

Our intent is to provide Sioux City and its citizens with a clear understanding of this team's qualifications and to create a high level of confidence in our ability to implement the design concepts. We are excited about the potential of building an economically feasible mixed-use project while preserving and enhancing the existing amenities of the Sioux City Convention Center Redevelopment Area.

The developer, Civic Partners, is a unique development firm recognized for its innovative approach to public/private partnering and its creative solutions to challenging land-use issues. We have brought together a core team of experienced consultants who share our vision for Sioux City and are dedicated to making this public/private project a reality.

The background and expertise of each team member relative to the goals and objectives outlined in the Request for Proposals were of high priority in the team-building process. Our development team was assembled after much careful thought and consideration of Sioux City's specific requirements and expectations. Together the professional members of this collaborative public/private venture can and will implement the compelling pedestrian-oriented design that will not only serve the needs of the community, but will be a source of community pride in public/private accomplishment.

In addition to individual expertise, this group is especially strong due to already existing working relationships among team members. A complete description of each team member is provided in the Development Team and Experience section of this document.

Mr. Roger J. Caudron
June 13, 2000
Page two

Civic Partners' approach to developing the proposed site involves working with the Mayor, City Council, agency staff, community leaders and others to identify and address the key economic and social goals of the project for both community and developer participants. Our experience suggests it is most efficient and effective not to attempt to provide a "fixed" final solution at this point in the process. For this reason, several areas of our response are necessarily preliminary in nature.

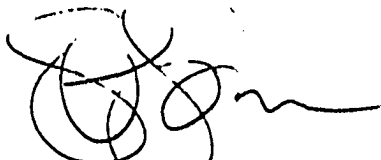
The development team's experience in this area has proven that a flexible approach allows for an interactive process and community-based solution. Thus, in working hand-in-hand with the City and the community, we will further define the project program and establish a detailed schedule to accomplish the stated goals.

Residents and visitors alike will enjoy first-class entertainment at a state-of-the-art, stadium seat multiplex Krikorian Premiere Theatre and in restaurants ranging from fast food to fine dining gourmet eateries. They will also enjoy the shopping experience of trend-setting retailers, as well as local businesses and boutique shops. In addition, we envision the adaptive reuse of the Pierce Warehouse into a unique, first-class suites hotel operated by Consolidated Holdings. The mix of these components within a dynamic village setting will generate an environment of excitement and activity around the clock.

We believe the theatre and hotel will anchor an exciting *Entertainment Center* that will connect Historic 4th Street with the downtown core of Sioux City. We have begun a preliminary marketing effort and intend to conduct a dynamic promotional and leasing program that will generate interest and enthusiasm among qualified prospective tenants.

The development team assembled by Civic Partners has the determination and perseverance to make this project a reality for Sioux City. We have the resources, personnel, and desire to move forward at a rapid pace. On behalf of all of us at Civic Partners, we would look forward to working with you to bring this exciting development opportunity to fruition.

Very truly yours,



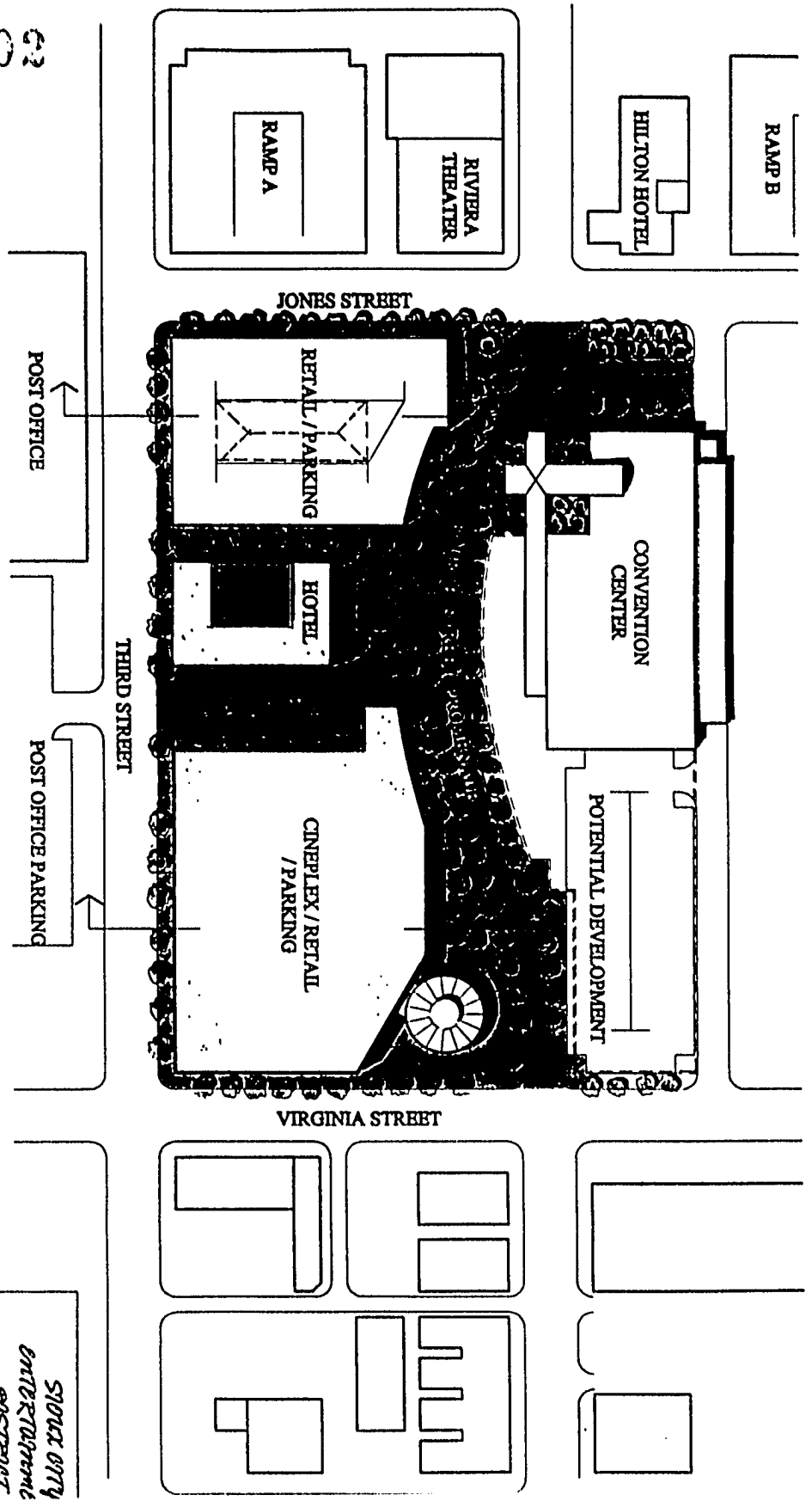
Steven P. Semington
President

EXHIBIT "C"
LEGAL DESCRIPTION

Lots 1 to 9 inclusive, and the North 150 feet of the vacated North/South alley, all in Block 22, Middle Sioux City, in the county of Woodbury and State of Iowa; and

Lots 1 to 12 inclusive, and the vacated North/South alley, and the vacated East/West alley, all in Block 23, Middle Sioux City, in the County of Woodbury and State of Iowa; and

The North 150 feet of vacated Jennings Street lying between said Blocks 22 and 23, Middle Sioux City, in the County of Woodbury and State of Iowa.



CONCEPT PLAN



SHOW CITY
 ENTERTAINMENT
 DISTRICT
 STREET CITY TO
 CIVIC PARKING
 CALL A REPRESENTATIVE

ASSESSMENT AGREEMENT

THIS AGREEMENT made on _____, 2001 by and between the City of Sioux City, Iowa, an Iowa municipal corporation, vested with urban renewal powers pursuant to Chapter 403, Code of Iowa, (hereinafter referred to as "City") and Civic Partners Sioux City, L.L.C. (hereinafter referred to as "Developer").

WHEREAS, Developer is the owner of the real estate in Sioux City, Woodbury County, Iowa, as described in the attached Exhibit "A"; and

WHEREAS, City and Developer have undertaken a program of construction of public improvements and private improvements on or in conjunction with the development of said real estate; and

WHEREAS, City and Developer have heretofore entered into a development agreement concerning such construction of public improvements and private improvements; and

WHEREAS, pursuant to Section 403.6, Code of Iowa, the City and Developer desire to enter into a written agreement establishing the minimum actual value of land and improvements located upon the land.

NOW, THEREFORE, in consideration of the promises and mutual obligations of the parties, hereto, each of them does hereby covenant and agree with the other as follows:

1. For the purpose of tax increment financing to be utilized by City in the performance of its responsibilities under the development agreement, Developer agrees that the minimum actual value of the real estate and improvements shall be as follows for the tax year commencing with the January 1, 2003 valuation:

Land and Improvements:	
• Theater Portion	\$ 3,000,000.00
• Retail Portion	900,000.00
Total	\$ 3,900,000.00

Effective for the tax year commencing January 1, 2004, the minimum actual value shall increase by the following:

Land and Improvements:	
• Theater Portion	\$ 3,300,000.00
• Retail Portion	900,000.00
Total:	\$ 4,200,000.00

- 2. The minimum actual value for the Theater Portion shall further increase by \$180,000.00 each year commencing January 1, 2005, and for the fourteen years thereafter for a total in the seventeenth year of \$9,000,000.00.

The minimum actual value for the Retail Portion shall total \$1,800,000.00 on January 1, 2004 and continue for fifteen additional years.

- 3. Although Developer may appeal or protest any valuation in excess of said minimum actual values, Developer shall not through protest, appeal or any other method seek to reduce the actual value of the real estate and improvements for tax purposes below the aforesaid minimum actual value.
- 4. Other than tax abatements specifically provided for in the development agreement, Developer agrees it shall not seek, nor shall the City grant, tax abatement during the term set forth in paragraph number two above.
- 5. In the event the manner of valuing properties for real estate tax purposes should change from the method existing at the time of the execution of this Agreement so as to substantially change the tax increment realized by the City, Developer agrees to adjust the minimum actual value of the land and improvements so as to achieve parity in tax increments raised by the City.
- 6. This Agreement shall be binding on the parties, their successors and assigns.
- 7. This Agreement shall be interpreted according to the laws of the State of Iowa.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be duly executed as of the day first above written.

CITY OF SIOUX CITY, IOWA

CIVIC PARTNERS SIOUX CITY, L.L.C.

Martin J. Dougherty, Mayor

Title: _____

Attest: _____
City Clerk

Attest: _____
Title: _____

STATE OF IOWA)
:
COUNTY OF WOODBURY)

BE IT REMEMBERED, on this ____ day of _____, 2001, before me the undersigned, a Notary Public in and for Woodbury County, personally appeared Martin J. Dougherty and Robert K. Padmore, to me personally known, who, being by me duly sworn, did say that they are Mayor and City Clerk, respectively, of the City of Sioux City, Iowa; that the seal affixed hereto is the seal of the City of Sioux City, Iowa; that the said instrument was signed and sealed on behalf of said City of Sioux City, Iowa, and that the said Martin J. Dougherty and Robert K. Padmore acknowledged the execution of said instrument to be the voluntary act and deed of said City of Sioux City, Iowa, by it and by them voluntarily executed.

Notary Public In And For Woodbury County

STATE OF IOWA)
:
COUNTY OF _____)

On this ____ day of _____, 2001, before me, the undersigned a Notary Public in and for said County and State, personally appeared _____ and _____, to me personally known, who being by me duly sworn, did say that they are the _____ and _____ respectively, of said corporation executing the within and foregoing instrument, that
(no seal has been procured by the said) corporation; that said instrument was
(the seal affixed thereto is the seal of said)
signed (and sealed) on behalf of said corporation by authority of its Board of Directors; and that the said _____ and _____ as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it and by them voluntarily executed.

Notary Public In And For Woodbury County

ASSESSOR'S CERTIFICATE

The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made upon it, certified that the actual value assigned to the land and improvements upon completion shall not be less than \$3,000,000.00 for the Theater Portion and \$900,000.00 for the Retail Portion effective January 1, 2003; and an additional \$3,300,000.00 for the Theater Portion and an additional \$900,000.00 for the Retail Portion effective January 1, 2004. Additionally, the Theater Portion shall incrementally increase each year thereafter by \$180,000.00 until the seventeenth year at which the actual minimum value shall not be less than \$9,000,000.00

M.J. Obbink, City Assessor

EXHIBIT 'A'

ROLL 523 IMAGE 1807 LEGAL DESCRIPTION

Lots 1 to 9 inclusive, and the North 150 feet of the vacated North/South alley, all in Block 22, Middle Sioux City, in the county of Woodbury and State of Iowa; and

Lots 1 to 12 inclusive, and the vacated North/South alley, and the vacated East/West alley, all in Block 23, Middle Sioux City, in the County of Woodbury and State of Iowa; and

The North 150 feet of vacated Jennings Street lying between said Blocks 22 and 23, Middle Sioux City, in the County of Woodbury and State of Iowa

CITY OF SIOUX CITY, IOWA

PROMISSORY NOTE

CIVIC PARTNERS SIOUX CITY, L.L.C.

Amount: \$1,980,000

Date:

For value received, the undersigned (hereafter called the "Maker") promises to pay to the order of the City of Sioux City, Iowa (hereafter called the "Payee"), at its principal offices at City Hall, P.O. Box 447, 405 6th Street, Sioux City, Iowa 51102, or upon notice to the Maker, at such other place as may be designated from time to time by the holder, the principal sum of One Million Nine Hundred Eighty Thousand Dollars (\$1,980,000), at 6.33% interest per annum for thirty (30) years, to be paid as follows:

- a.) Payments of interest and principal in the amount of \$12,294.41 monthly, the first payment of interest and principal due and payable one month from the date hereof, and continuing monthly hereafter for ten (10) years; and
- b.) The Maker will make additional payments to the Payee comprised of fifty percent (50%) of the percentage rent received by the Maker from the operator of the cinema on Parcel 1, as identified in the Contract for Sale of Land dated _____, as and when such payments are received by the Maker. One-half (1/2) of each such additional payment made by the Maker on the loan will be applied to additional interest and the remaining one-half (1/2) of the payment amount will be applied as accelerated principal payments.
- c.) On the tenth (10th) anniversary of the date hereof, _____, the Maker shall pay the Payee the balance of the outstanding principal and all due and unpaid interest.

1. Payments. All payments under the Note shall be applied in this order: (1) to interest, and (2) to principal.

2. Loan Agreement; Acceleration Upon Default. This Note is issued by Maker to evidence an obligation to repay a loan according to the terms of the Loan and Servicing Agreement dated _____ between the Payee and Maker and, at the election of the holder without notice to the Maker, shall become immediately due and payable in the event any payment is not made when due or upon the occurrence of any default under the terms of the Loan and Servicing Agreement.

3. Reduced Amount. In the event the Maker fails to requisition and spend the full face amount of the Note as set out above, then the amount of each installment payment shall be reduced accordingly in equal amounts.

4. Security. Payment of this Note is secured by a Mortgage.

In case of a decline in the market value of the collateral, or any part thereof, the Payee may demand that additional collateral of quality and value satisfactory to holder be delivered, pledged and transferred to holder.

5. Waiver. No delay or omission on the part of the holder in exercising any right under this Note shall operate as a waiver of that right or of any other right under this Note. A waiver on any one occasion shall not be construed as a bar to or waiver of any right and/or remedy on any future occasion.

6. Waiver of Protest. Each maker, surety, endorser and guarantor of this Note, expressly waives presentment, protest, demand, notice of dishonor or default, and notice of any kind with respect to this Note.

7. Costs of Collection. The Maker will pay on demand all costs of collection, maintenance of collateral, legal expenses, and attorneys' fees incurred or paid by the holder in collecting and/or enforcing this Note on default.

8. **Relocation.** Relocation of the Maker outside of the municipal boundaries of the City of Sioux City, Iowa, will constitute a default of this Note and make the balance immediately due and payable.

9. **Meaning of Terms.** As used in the Note, "holder" shall mean the Payee or other endorsee of this Note, who is in possession of it, or the bearer hereof, if this Note is at the time payable to the bearer. The word "Maker" shall mean each of the undersigned. If this Note is signed by more than one person, it shall be the joint and several liabilities of such persons.

10. **Miscellaneous.** The captions of paragraphs in this Promissory Note are for the convenience of reference only, shall not define or limit the provisions hereof and shall not have any legal or other significance whatsoever.

CIVIC PARTNERS SIOUX CITY, L.L.C.

By: _____
Steven P. Semingson, President

CORPORATE CERTIFICATE OF ACKNOWLEDGMENT

STATE OF _____)
) SS:
COUNTY OF _____)

On this _____ day of _____, 20____, before me, a Notary Public in and for said county and state, personally appeared, Steven P. Semingson to me personally known, who being by me duly sworn did state that he is the President of said corporation, that the said corporation has no corporate seal and that said instrument was signed on behalf of said corporation by authority of its board of directors, and that the said President acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by each of them voluntarily executed.

Notary Public in and for said County and State.

CITY OF SIOUX CITY, IOWA
LOAN AND SERVICING AGREEMENT
CIVIC PARTNERS SIOUX CITY, L.L.C.

Loan and Servicing Agreement, executed this ____ day of _____, 20____, by and between the City of Sioux City, Iowa (the City), an Iowa municipal corporation with principal offices at City Hall, P.O. Box 447, 405 6th Street, Sioux City, Iowa 51102, and Civic Partners Sioux City, L.L.C., (Borrower) an Iowa corporation, with principal offices at _____.

WITNESSETH

WHEREAS, the City and Borrower have heretofore or will hereafter enter into certain undertakings and agreements and execute certain instruments, including security and collateral instruments, for the purpose of enabling the City to lend to Borrower the initial sum of One Million Nine Hundred Eighty Thousand Dollars (\$1,980,000); and

WHEREAS, the City may lawfully lend said funds and Borrower may lawfully borrow same;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings of the parties expressed below, the parties hereby covenant and agree as follows:

1. Scope of Undertaking. It is understood and acknowledged that the City shall lend funds to Borrower to enable Borrower to construct improvements in Sioux City, Iowa, as noted in the description attached hereto as Exhibit A.
2. Loan. To further assist in the financial undertaking described in Section 1 above, the City shall lend Borrower the sum of One Million Nine Hundred Eighty Thousand Dollars (\$1,980,000), subject to the terms and conditions of this Agreement and any ancillary agreements and instruments.
3. Note. The loan to Borrower shall be evidenced by a promissory note in a form acceptable to the City, executed by Borrower's duly authorized official(s).
4. Payment. Repayment of the loan provided for in Sections 1 and 2 above shall be made under the terms and conditions contained in the promissory note for said loan.
5. Responsibility of the City. The City shall be responsible for the administration, monitoring and servicing of the loan provided for in Sections 1 and 2 above from the inception of said loan project through payment in full of all obligations to the City. All servicing actions of the City are expressly made subject to the terms of this Agreement, any promissory notes, security agreements and related instruments executed by and between the City and Borrower.
6. Method of Repayment. Borrower shall repay the City loan by making monthly installment payments for ten years, making additional principal and interest payments based upon rental receipts, and a balloon payment for the balance due at the end of the ten year period, directly to the City at the address first written above in a sum computed as described in the promissory note evidencing said loan.
7. Additional Affirmative Covenants of Borrower. Borrower covenants, warrants, guarantees and represents:
 - (a) It shall fully and faithfully repay the principal and interest due on all other debt of Borrower now existing or hereafter acquired;

(b) It is duly authorized and existing in good standing under the laws of the State of Iowa and has the power to own its property and carry on its business as it is now being conducted;

(c) It has the full power and authority to enter into this Agreement, undertake the borrowings provided for or reflected herein, and deliver the note or notes, and to execute and deliver the instruments and documents which may be required pursuant hereto, all of which have been duly authorized by the proper, appropriate and necessary action of the officers; no consent or approval of any public authority or regulatory agency is required as a condition of validity of the obligation of Borrower under this Agreement; the note or notes or the documents or instruments contemplated hereby other than those consents or approvals which have already been obtained and copies of which have been delivered or will be delivered to the City pursuant to this or any ancillary agreements;

(d) There is no bylaw provision of Borrower and no provision of any existing mortgage, indenture, contract, or agreement binding upon Borrower which would conflict with or in any way prevent the execution, delivery or performance of the terms of this Agreement;

(e) It will provide and maintain hazard insurance in such amounts and for such coverage as shall be satisfactory to the City. All such policies shall specify the City as a mortgagee and loss payable. Borrower will further purchase Federal Flood Insurance in amounts and coverage satisfactory to the City if Borrower becomes located within a special flood hazard area as defined by FEMA during the term of this loan and Federal Flood Insurance is available;

(f) Upon the City's request it will submit to the City financial statements consisting of an Income Statement, Balance Sheet and Profit and Loss Statements. The statements will be certified as true and correct copies by Borrower.

8. Employment Opportunity. Borrower shall not discriminate against any applicant for employment or employee on the basis of race, color, religion, sex, national origin, handicap or disability. Borrower shall undertake whatever affirmative measures are necessary so that no person shall, on the grounds of race, color, religion, national origin, sex, age, handicap or disability, be excluded from employment with the Borrower. Borrower has made certain representations regarding the job impact of the financial undertaking contemplated in Section 1 of this Agreement. To document the validity of those representations, Borrower shall provide such reports as may be required from time to time by the City.

9. Job Attainment. There are no job attainment requirements.

10. Events of Default. If any of the following events shall occur and be continuing, the City may declare the loan to be in default:

(a) There is a material change in ownership or control, except death of a shareholder, of the Borrower without the prior written consent of the City, which shall not be unreasonably withheld;

(b) Borrower shall file a petition in the U.S. Bankruptcy Court or an involuntary petition shall be so filed against Borrower;

(c) Breach of any of the covenants, promises or conditions of any note, security agreement or other agreement with the holder, which breach shall not be remedied within 60 days of notice in writing by the City to the Borrower;

(d) The City, in good faith, deems itself insecure. In the event the City has wrongfully defaulted the Borrower in acceleration of this note, the City shall pay all costs to the Borrower occasioned by the wrongful default and acceleration.

(e) At the end of the project completion date, which is two (2) years from the date first written above, the Borrower has failed to fulfill the job attainment obligations set forth in Section 9 above.

(f) The Borrower, within ten (10) years of the date of this agreement, relocates all or a substantial portion of Borrower's business outside of the municipal boundaries of the City of Sioux City, Iowa.

11. Actions Upon a Declaration of Default. Upon declaration of default by the City, the City may by notice to the Borrower in writing, declare the loan payable under the Promissory Note and this Agreement to be forthwith due and payable, without presentment, demand, protects, or further notice of any kind, all of which are hereby expressly waived by the parties.
12. Conflicting Provisions. In the event of any conflict between any provision of this Agreement and any other document, instrument or agreement executed by and between the City and Borrower in connection with the financing described in Sections 1 and 2 above, the terms of such other document, instrument or agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Loan and Servicing Agreement by their duly authorized representatives as of the date above first written.

CIVIC PARTNERS SIOUX CITY, L.L.C.

CITY OF SIOUX CITY, IOWA

By: _____
Steven P. Semingson, President

By: _____
Martin J. Dougherty, Mayor

Attest: _____
Robert Padmore, City Clerk

ROLL 523 IMAGE 1813

EXHIBIT "A"

Legal Description of Project Site

Lots 1 to 9 inclusive, and the North 150 feet of the vacated North/South alley, all in Block 22, Middle Sioux City, in the County of Woodbury and State of Iowa; and

Lots 1 to 12 inclusive, and the vacated North/South alley, and the vacated East/West alley, all in Block 23, Middle Sioux City, in the County of Woodbury and State of Iowa; and

The North 150 feet of vacated Jennings Street lying between said Blocks 22 and 23, Middle Sioux City, in the County of Woodbury and State of Iowa.

MORTGAGE
(Open-End)

CIVIC PARTNERS SIOUX CITY, L.L.C.

THIS MORTGAGE ("Mortgage") encumbers both real and personal property, contains an after-acquired property clause and secures present and future loans and advances.

NOTICE: This Mortgage secures credit in the amount of \$1,980,000. Loans and advances up to this amount, together with interest are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.

_____ If this box is checked, this Mortgage also constitutes a Construction Mortgage as defined in the Iowa Code.

This Mortgage is made between Civic Partners Sioux City, L.L.C. ("Mortgagors") and the City of Sioux City, Iowa ("Mortgagee").

1. Grant of Mortgage and Security Interest. Mortgagors hereby sell, convey and mortgage unto Mortgagee, and grant a security interest to Mortgagee in the following described property:

A. Land and Buildings. All of Mortgagors' right, title and interest in and to the following described real estate situated in Woodbury County, Iowa (the "Land");

Lots 1 to 9 inclusive, and the North 150 feet of the vacated North/South alley, all in Block 22, Middle Sioux City, in the County of Woodbury and State of Iowa; and

Lots 1 to 12 inclusive, and the vacated North/South alley, and the vacated East/West alley, all in Block 23, Middle Sioux City, in the County of Woodbury and State of Iowa; and

The North 150 feet of vacated Jennings Street lying between said Blocks 22 and 23, Middle Sioux City, in the County of Woodbury and State of Iowa.

And all buildings, structures and improvements now standing or at any time hereafter constructed or placed upon the Land (the "Buildings"), including all hereditaments, easements, appurtenances, riparian rights, mineral rights, water rights, rights in and to the lands lying in streets, alleys and roads adjoining the land, estates and other rights and interests now or hereafter belonging to or in any way pertaining to the Land.

B. Personal Property. All fixtures and other personal property integrally belonging to, or hereafter becoming an integral part of the Land or Buildings, whether attached or detached, including but not limited to, light fixtures, shades, rods, blinds, venetian blinds, awnings, storm windows, screens, linoleum, water softeners, automatic heating and air conditioning equipment and all proceeds, products, increase, issue, accessions, attachments, accessories, parts, additions, repairs, replacements and substitutes of, to, and for the foregoing (the "Personal Property").

C. Revenues and Income. All rents, issues, profits, leases, condemnation awards and insurance proceeds now or hereafter arising from the ownership, occupancy or use of the Land, Buildings and Personal Property, or any part thereof (the "Revenues and Income").

TO HAVE AND TO HOLD the Land, Buildings, Personal Property and Revenues and Income (collectively called the "Mortgaged Property"), together with all privileges, hereditaments thereunto now or hereafter belonging, or in any way appertaining and the products and proceeds thereof, unto Mortgagee, its successors and assigns.

2. Obligations. This Mortgage secures the following (hereinafter collectively referred to as the "Obligations"):

A. The payment of the loan made by Mortgagee to Civic Partners Sioux City, L.L.C., evidenced by a promissory note dated _____, 20____, in the principal amount of \$1,980,000, any renewals, extensions, modifications or refinancing thereof and any promissory notes issued in substitution therefor; and

B. All other obligations of Mortgagors to Mortgagee, now existing or hereinafter arising, whether direct or indirect, contingent or absolute and whether as maker or surety, including, but not limited to, future advances and amounts, advanced and expenses incurred by Mortgagee pursuant to this Mortgage.

THIS PARAGRAPH SHALL NOT CONSTITUTE A COMMITMENT TO MAKE ADDITIONAL LOANS IN ANY AMOUNT.

3. Representations and Warranties of Mortgagors. Mortgagors represent, warrant and covenant to Mortgagees that (i) Mortgagors hold clear title to the Mortgaged Property and title in fee simple in the Land; (ii) Mortgagors have the right, power and authority to execute this Mortgage and to mortgage, and grant a security interest in the Mortgaged Property; (iii) The Mortgaged Property is free and clear of all liens and encumbrances, except for real estate taxes not yet delinquent and except as otherwise stated in subparagraph 1A. herein; (iv) Mortgagors will warrant and defend title to the Mortgaged Property and the lien and priority of this Mortgage against all claims and demands of all persons, whether now existing or hereafter arising; and (v) All buildings and improvements now or hereafter located on the Land are, or will be, located entirely within the boundaries of the Land.

4. Payment and Performance of Obligations. Mortgagors will pay all amounts payable under the Obligations in accordance with the terms of the Obligations when and as due and will timely perform all other Obligations of Mortgagors under the Obligations. The provisions of the Obligations are hereby incorporated by reference into this Mortgage as if fully set forth herein.

5. Taxes. Mortgagors shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against the Mortgaged Property before the same becomes delinquent, without notice or demand, and shall deliver to Mortgagee proof of such payment within fifteen (15) days after the date in which such tax or assessment becomes delinquent.

6. Liens. Mortgagors shall not create, incur or suffer to exist any lien, encumbrance, security interest or charge on the Mortgaged Property or any part thereof which might or could be held to be equal or prior to the lien of this Mortgage, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable. Mortgagors shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.

7. Compliance With Laws. Mortgagors shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the Mortgaged Property, any part thereof or the use thereof.

8. Permitted Contest. Mortgagors shall not be required to (i) pay any tax, assessment or other charge referred to in paragraph 5 hereof, (ii) discharge or remove any lien, encumbrance or charge referred to in paragraph 6 hereof, or (iii) comply with any statute, law, rule, regulation or ordinance referred to in paragraph 7 hereof, so long as Mortgagors shall contest, in good faith, the existence, amount or the validity thereof, the amount of damages caused thereby or the extent of Mortgagors' liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent: (A) the collection of, or other realization upon the tax, assessment, charge or lien, encumbrances or charge so contested, (B) the sale, forfeiture or loss of the Mortgaged Property or any part thereof, and (C) any interference with the use or occupancy of the Mortgaged Property or any part thereof. Mortgagors shall give prompt written notice to Mortgagee of the commencement of any contest referred to in this paragraph 8.

9. **Care of Property.** Mortgagors shall take good care of the Mortgaged Property; shall keep the Buildings and Personal Property now or later placed upon the Mortgaged Property in good and reasonable repair and shall not injure, destroy or remove either the Buildings or Personal Property during the term of this Mortgage. Mortgagors shall not make any material alteration to the Mortgaged Property without the prior written consent of Mortgagee.

10. **Insurance.**

A. Risks to be Insured. Mortgagors, at their sole cost and expense, shall maintain insurance as follows:

(i) If this is a Construction Mortgage, during the period of construction, Mortgagors will maintain builder's risk insurance, written on the so-called "builder's risk completed value basis", in an amount equal to 100% of the insurable value of the Mortgaged Property at the date of completion, and with coverage available on the so-called all risk, non-reporting form of policy; provided that, to the extent that any contractor for such construction shall provide a duplicate insurance policy or builder's risk policy or certificate of insurance showing that the same coverage as is herein required is being carried by such contractor and adequately protects the interest of Mortgagee and Mortgagors with respect to the Mortgaged Property or a part thereof. Mortgagee shall not be required to maintain separate coverage. The insurance provided for by this subparagraph (i) with respect to the Mortgaged Property or such part thereof shall not be required while the Mortgaged Property or part thereof is so insured. Mortgagee's interest shall be protected in accordance with a standard mortgagee clause.

(ii) If this is a Construction Mortgage, during the period of construction, Mortgagors will maintain comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, complete operations and contractual liability insurance) against bodily injury and property damage in amounts satisfactory to Mortgagee. If this is not a Construction Mortgage, or upon completion of construction, Mortgagors will maintain comprehensive general public liability insurance and property damage liability insurance in amounts satisfactory to Mortgagee to protect Mortgagors from claims (including all costs and expenses of defending the same) for personal injury, sickness, disease or death or for damage or injury to or destruction of property (including loss of use thereof) occurring in, on or about the Mortgaged Property.

(iii) If this is not a Construction Mortgage, or upon completion of construction, Mortgagors will maintain insurance on the Buildings and other improvements now existing or hereafter erected on the Land and on the Personal Property included in the Mortgaged Property against loss by fire, extended coverage perils and such other hazards as Mortgagee may from time to time require, such insurance to have a "Replacement Cost" endorsement attached thereto, with the amount of the insurance at least equal to the balance of the Obligations. At Mortgagors' option, such policy may have a coinsurance clause of not less than 90% of replacement cost provided the policy contains an appropriate form of cost escalation endorsement. Mortgagors will at their sole cost and expense, from time to time, and at any time at the request of Mortgagee, provide Mortgagee with evidence satisfactory to Mortgagee of the replacement cost of Mortgaged Property.

(iv) If this is a Construction Mortgage, during the period of construction, Mortgagors will maintain worker's compensation insurance with respect to all employees of Mortgagors and each contractor; and, if this is not a Construction Mortgage, or upon completion of construction, Mortgagors will maintain worker's compensation insurance with respect to all employees of Mortgagors.

(v) At all times, Mortgagors will maintain such other insurance as Mortgagee may reasonably require.

B. Policy Provisions. All insurance policies and renewals thereof maintained by Mortgagors pursuant to this Mortgage shall be written by an insurance carrier satisfactory to Mortgagee, contain a mortgagee clause in favor of and in form acceptable to Mortgagee, contain an agreement of the insurer that it will not amend,

modify or cancel the policy except after thirty (30) days prior written notice to Mortgagee, and be reasonably satisfactory to Mortgagee in all other respects.

C. Delivery of Policy or Certificate. If requested by Mortgagee, Mortgagors will deliver to Mortgagee original policies satisfactory to Mortgagee evidencing the insurance which is required under this Mortgage, and Mortgagors shall promptly furnish to Mortgagee all renewal notices and, upon request of Mortgagee, evidence of payment thereof. At least ten (10) days prior to the expiration date of a required policy, Mortgagors shall deliver to Mortgagee a renewal policy in form satisfactory to Mortgagee.

D. Assignment of Policy. If the Mortgaged Property is sold at a foreclosure sale or if Mortgagee shall acquire title to the Mortgaged Property, Mortgagee shall have all of the right, title and interest of Mortgagors in and to any insurance policies required hereunder, and the unearned premiums thereon, and in and to the proceeds thereof resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

E. Notice of Damage or Destruction; Adjusting Loss. If the Mortgaged Property or any part thereof shall be damaged or destroyed by fire or other casualty, Mortgagors will, within five (5) calendar days after the occurrence of such damage or destruction, give written notice thereof to the insurance carrier and to Mortgagee and will not adjust any damage or loss which is estimated by Mortgagors in good faith to exceed \$25,000 unless Mortgagee shall have joined in or concurred with such adjustment; but if there has been no adjustment of any such damage or loss within four (4) months from the date of occurrence thereof and if an Event of Default shall exist at the end of such four (4) month period or at any time thereafter, Mortgagee may alone make proof of loss, adjust and compromise any claim under the policies, and appear in and prosecute any action arising from such policies. In connection therewith, Mortgagors do hereby irrevocably authorize, empower and appoint Mortgagee as attorney-in-fact for Mortgagor (which appointment is coupled with an interest) to do any and all of the foregoing in the name and on behalf of Mortgagors.

F. Application of Insurance Proceeds. All sums paid under any insurance policy required by this Mortgage shall be paid to Mortgagee, which shall, at its option, apply the same (after first deducting therefrom Mortgagee's expenses incurred in collecting the same including but not limited to reasonable attorney's fees) to the reduction of the Obligations or to the payment of the restoration, repair, replacement or rebuilding of Mortgaged Property that is damaged or destroyed in such manner as Mortgagee shall determine and secondly to the reduction of the Obligations. Any application of insurance proceeds to principal of the Obligations shall not extend or postpone the due date of the installments payable under the Obligations or change the amount of such installments.

G. Reimbursement of Mortgagee's Expenses. Mortgagors shall promptly reimburse Mortgagee upon demand for all of Mortgagee's expenses incurred in connection with the collection of the insurance proceeds, including but not limited to reasonable attorneys' fees, and all such expenses shall be additional amounts secured by this Mortgage.

11. Inspection. Mortgagee, and its agents, shall have the right at all reasonable times, to enter upon the Mortgaged Property for the purpose of inspecting the Mortgaged Property or any part thereof. Mortgagee shall, however, have no duty to make such inspection. Any inspection of the Mortgaged Property by Mortgagee shall be entirely for its benefit and Mortgagors shall in no way rely or claim reliance thereon.

12. Protection of Mortgagee's Security. Subject to the rights of Mortgagors under paragraph 8 hereof, if Mortgagors fail to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which affects the Mortgaged Property or the interest of the Mortgagee therein, or the title thereto, then Mortgagee, at Mortgagee's option, may perform such covenants and agreements, defend against or investigate such action or proceeding, and take such other action as Mortgagee deems necessary to protect Mortgagee's interest. Any amounts or expenses disbursed or incurred by Mortgagee in good faith pursuant to this paragraph 12 with interest thereon at the rate of 9% per annum, shall become an Obligation of Mortgagors secured by this Mortgage. Such amounts advanced or disbursed by Mortgagee hereunder shall be immediately due and

payable by Mortgagors unless Mortgagors and Mortgagee agree in writing to other terms of repayment. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the Obligations or by Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this paragraph shall require Mortgagee to incur any expense or do any act hereunder, and Mortgagee shall not be liable to Mortgagors for any damage or claims arising out of action taken by Mortgagee pursuant to this paragraph.

13. Condemnation. Mortgagors shall give Mortgagee prompt notice of any action, actual or threatened, in condemnation or eminent domain and hereby assign, transfer and set over to Mortgagee the entire proceeds of any award or claim for damages for all or any part of the Mortgaged Property taken or damaged under the power of eminent domain or condemnation. Mortgagee is hereby authorized to intervene in any such action in the names of Mortgagors, to compromise and settle any such action or claim, and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Any expenses incurred by Mortgagee in intervening in such action or compromising and settling such action or claim, or collecting such proceeds shall be reimbursed to Mortgagee first out of the proceeds. The remaining proceeds or any part thereof shall be applied to reduction of that portion of the Obligations then most remotely to be paid, whether due or not, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee.

14. Fixture Filing. From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to the Personal Property and for this purpose the name and address of the debtor is the name and address of Mortgagors as set forth in paragraph 20 herein and the name and address of the secured party is the name and address of the Mortgagee as set forth in paragraph 20 herein.

15. Events of Default. Each of the following occurrences shall constitute an event of default hereunder ("Event of Default"):

A. Mortgagors shall default in the due observance or performance of or breach its agreement contained in paragraph 4 hereof or shall default in the due observance or performance of or breach any other covenant, condition or agreement on its part to be observed or performed pursuant to the terms of this Mortgage.

B. Mortgagors shall make an assignment for the benefits of its creditors, or a petition shall be filed by or against Mortgagors under the United States Bankruptcy Code or Mortgagors shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties or of the Mortgaged Property or shall not, within thirty (30) days after the appointment of a trustee, receiver or liquidator of any material part of its properties or of the Mortgaged Property, has such appointment vacated.

C. A judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien on or be issued or levied against the Mortgaged Property or any part thereof which is not released, vacated or fully bonded within thirty (30) days after its entry, issue or levy.

D. An event of default, however defined, shall occur under any other mortgage, assignment or other security document constituting a lien on the Mortgaged Property or any part thereof.

16. Acceleration; Foreclosure. Upon the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, Mortgagee may, at its option, exercise one or more of the following rights and remedies (and any other rights and remedies available to it):

A. Mortgagee may declare immediately due and payable all Obligations secured by this Mortgage, and the same shall thereupon be immediately due and payable, without further notice or demand.

B. Mortgagee shall have and may exercise with respect to the Personal Property, all the rights and remedies accorded upon default to a secured party under the Iowa Uniform Commercial Code. If notice to Mortgagors

of intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to Mortgagors at least ten (10) days prior to the date of intended disposition.

C. Mortgagee may (and is hereby authorized and empowered to) foreclose this Mortgage in accordance with the law of the State of Iowa, and at any time after the commencement of an action in foreclosure, or during the period of redemption, the court having jurisdiction of the case shall at the request of Mortgagee appoint a receiver to take immediate possession of the Mortgaged Property and of the Revenues and Income accruing therefrom, and to rent or cultivate the same as he may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Mortgagors only for the net profits, after application of rents, issues and profits upon the costs and expenses of the receivership and foreclosure and upon the Obligations.

17. Redemption. It is agreed that if this mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided the Mortgagee, in such action files an election to waive any deficiency judgment against Mortgagors which may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after sale such right of redemption shall be exclusive to the Mortgagee, and the time periods in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days if all of the three following contingencies develop:

(1) The real estate is less than ten (10) acres in size;

(2) The Court finds affirmatively that the said real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and

(3) Mortgagee in such action files an election to waive any deficiency judgment against Mortgagors or their successor in interest in such action. If the redemption period is so reduced, Mortgagors or their successors in interest or the owner shall have the exclusive right to redeem for the first thirty (30) days after such sale, and the time provided for redemption by creditors as provided in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of Mortgagors shall be a presumption that the property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code.

18. Attorney's Fees. Mortgagors shall pay on demand all costs and expenses incurred by Mortgagee in enforcing or protecting its rights and remedies hereunder, including, but limited to, reasonable attorneys' fees and legal expenses.

19. Forbearance Not a Waiver, Rights and Remedies Cumulative. No delay by Mortgagee in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by Mortgagee of any particular provisions of this Mortgage shall be deemed effective unless in writing signed by Mortgagee. All such rights and remedies provided for herein or which Mortgagee or the holder of the Obligations may have otherwise, at law or in equity, shall be distinct, separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefor arises.

20. Notices. All notices required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the United States mail, postage prepaid, sent certified or registered, addressed as follows:

A. If to Mortgagors, to:

Civic Partners Sioux City, L.L.C.
? address ?

B. If to Mortgagee, to:

City of Sioux City, Iowa
c/o Economic Development Division
P.O. Box 447
405 Sixth Street
Sioux City, Iowa 51102

or to such other address or person as hereafter designated in writing by the applicable party in the manner provided in this paragraph for the giving of notices.

21. **Severability.** In the event any portion of this Mortgage shall, for any reason, be held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Mortgage is invalid, illegal, or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable then such provision shall be deemed to be written, construed and enforced as so limited.

22. **Further Assurances.** At any time and from time to time until payment in full of the Obligations, Mortgagors will, at the request of Mortgagee, promptly execute and deliver to Mortgagee such additional instruments as may be reasonably required to further evidence the lien of this Mortgage to further protect the security interest of Mortgagee with respect to the Mortgaged Property, including, but not limited to, additional security agreements, financing statements and continuation statements. Any expenses incurred by Mortgagee in connection with the recordation of any such instruments shall become additional Obligations of Mortgagors secured by this Mortgage. Such amounts shall be immediately due and payable by Mortgagors to Mortgagee.

23. **Successors and Assigns bound; Number; Gender; Agents; Captions.** The rights, covenants and agreements contained herein shall be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of the parties. Words and phrases contained herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the contexts. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

24. **Governing Law.** This Mortgage shall be governed by and construed in accordance with the laws of the State of Iowa.

25. **Release and Rights of Dower; Homestead and Distributive Share.** Each of the undersign hereby relinquishes all rights of dower, homestead and distributive share in and to the Mortgaged Property and waives all rights of exemption as to any of the Mortgaged Property.

26. **Acknowledgment of Receipt of Copies of Debt Instrument.** Mortgagors hereby acknowledge the receipt of a copy of this Mortgage together with a copy of each promissory note secured hereby.

Dated: _____, 20_____.

MORTGAGORS:

CIVIC PARTNERS SIOUX CITY, L.L.C.

"EXHIBIT G OF PART I"

The Project is intended to consist of two (2) defined phases with the possibility of future phases of development, including those described in Sections 8(i) and 8(j). The Property, which consists of Parcels 1 and 2, shown on the Site Plan and legally described in Exhibit C, is located on the corner of Third Street and Virginia Street and is bounded on the North by a reconfigured Fourth Street Promenade and on the West by the Diversified Trucking Building (shown as Parcel 3).

Phase I. Phase I is the development on Parcel 1 of an approximately 65,000 square foot commercial structure including an approximately 50,000 square foot 12 screen cinema and approximately 15,000 square feet of retail. The parties acknowledge that these numbers are preliminary and may be modified as the design and development of the building proceeds.

Phase II. Phase II involves the renovation of the existing Pierce warehouse into a hotel with approximately 110 rooms. The parties acknowledge that the exact number of rooms and the details of the renovation will be determined in the design and development process.

Future Phases. Pursuant to Sections 8(i) and 8(j) the City has agreed that the Redeveloper, under certain defined circumstances, may have the opportunity to develop a parking/retail structure on Parcel 3 and/or residential development(s) in downtown Sioux City. Additionally, future phases may include a residential development on top of the Parcel 3 parking/retail structure. If such developments are to be completed, the parties will enter into amendments or supplements to this Agreement defining such future phases.

PART II

**ARTICLE I.
PREPARATION OF PROPERTY FOR REDEVELOPMENT**

SECTION 101:

Work to be performed by City. The City shall be required to prepare Parcel 1 for redevelopment by the Redeveloper by performing the following acts: (a) the City shall remove all improvements on Parcel 1 associated with the existing farmer's market.

SECTION 102: Redeveloper's responsibilities for certain other actions.

Maintenance of public utilities. Upon conveyance of the city-owned property to the Redeveloper, any City-owned sanitary sewers, storm sewers, and water mains located on the Property and which exclusively serve the Property purchased by the Redeveloper shall also become the property of the Redeveloper. The Redeveloper shall be responsible for the operation and maintenance of such sewers, water lines and utilities. The Redeveloper shall not, however, take title to any City sanitary sewers, storm sewers or water mains which traverse the Property for the purposes of serving premises other than the Property purchased by the Redeveloper and the City shall have a permanent easement for such utilities. The relocation of any such sewers, or utilities as deemed necessary by the Redeveloper shall be at no cost to the City.

**ARTICLE II
RIGHTS OF ACCESS TO PROPERTY**

SECTION 201: Rights of access to property. Prior to the conveyance of the Property by the City to the Redeveloper, the City shall assist representatives of the Redeveloper to have access to any part of the Property at all reasonable times for the purpose of obtaining data and making various tests concerning the Property necessary to carry out this Agreement. After the conveyance of the Property by the City to the Redeveloper, the Redeveloper shall permit the City and/or its representatives access to the Property and abutting property owned or leased by the Redeveloper, at all reasonable times which any of them deems necessary for the purposes of this Agreement, including, but not limited to, inspection of all work being performed in connection with the construction of the improvements. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this section.

**ARTICLE III
CONSTRUCTION PLANS, CONSTRUCTION OF IMPROVEMENTS,
AND CERTIFICATE OF COMPLETION**

SECTION 301: Plans for construction of improvements. Plans and specifications with respect to the redevelopment of the Property and the construction of improvements thereon (the "Construction Plans") shall be in conformity with the Urban Renewal Plan, this Agreement, and all applicable state laws and local laws and regulations, and generally consistent with "Exhibit B of Part I" hereof, except as the plans for the development have been updated and described on "Exhibit G" and in any further site plans or amendments or supplements to this Agreement approved by the City. As promptly as possible after the date of this Agreement, and, in any event no later than the time specified therefor in subsection (b) of Section 5 hereof, the Redeveloper

shall submit to the City, for approval by the City, construction plans for Phase I of the Project as defined below and the proposed construction schedule with respect to the improvements to be constructed by the Redeveloper on Parcel 1, in sufficient completeness and detail to show that such improvements and construction thereof will be in accordance with the provisions of the Urban Renewal Plan and this Agreement. The Redeveloper shall submit to the City, for approval by the City, construction plans for Phase I and future phases, if any, in accordance with the time frames to be established in an amendment or supplement to this Agreement, in sufficient completeness and detail to show that such improvements and construction thereof will be in accordance with the provisions of the Urban Renewal Plan and this Agreement.

The construction plans, submitted by the Redeveloper, must be consistent with and be a logical development of or reasonably inferable from "Exhibit B of Part I" hereof. The City shall, if the construction plans originally submitted conform to the provisions of the Urban Renewal Plan and this Agreement, approve in writing such construction plans, and no further filing by the Redeveloper or approval by the City thereof shall be required under this requirement except with respect to any material change.

Such construction plans shall, in any event, be deemed approved unless rejection thereof in writing by the City, in whole or in part, setting forth in detail the reasons therefor, be made within fourteen (14) days after the date of their receipt by the City. If the City so rejects the construction plans, in whole or in part, as not being in conformity with the Urban Renewal Plan or this Agreement, the Redeveloper shall submit new or corrected construction plans which are in conformity with the Urban Renewal Plan and this Agreement, within the time specified in Section 5 hereof, after written notification to the Redeveloper of the rejection.

The provisions of this section relating to approval, rejection and resubmission of corrected construction plans herein above provided with respect to the original construction plans shall continue to apply until the construction plans have been approved by the City: provided, that in any event the Redeveloper shall submit construction plans which are in conformity with the requirements of the Urban Renewal Plan and this Agreement, as determined by the City, no later than the time specified in Section 5. All work with respect to the improvements to be constructed or provided by the Redeveloper on Parcel 1 shall be in conformity with the construction plans as approved by the City.

The term "improvements", as used in this Agreement, shall be deemed to have reference to the improvements, including landscaping, and signs as provided and specified in the construction plans once such plans are approved.

These construction plans shall include, but are not limited to, all plans and documents required for site plan review under the City's site plan ordinance together with building elevations for each building face of the improvements, and floor plans for each level. The site plan ordinance review is a separate review process from the review of construction plans provided for in this Agreement. Approval of construction plans pursuant to one does not constitute approval for purposes of the other.

SECTION 302: Changes in construction plans. If the Redeveloper desires to make any change in the construction plans after their approval by the City, the Redeveloper shall submit the proposed change to the City for its approval. If the construction plans for the Property, as modified by the proposed change, conform to the requirements of Section 301 hereof with respect to such

previously approved construction plans, the City shall approve the proposed change and notify the Redeveloper in writing of its approval. Such change in the construction plans shall, in any event, be deemed approved by the City unless they shall be rejected, in whole or in part, by written notice thereof by the City to the Redeveloper, setting forth in detail the reasons therefor, within the period specified in Section 5.

SECTION 303: Evidence of equity capital and mortgage financing. As promptly as possible and, in any event, no later than the time specified in Section 5 thereof, the Redeveloper shall submit to the City evidence satisfactory to the City that the Redeveloper has the equity, capital and commitments for mortgage financing necessary for the construction of the improvements on Parcel 1. The timing for submission to the City of evidence of equity, capital and commitments for the mortgage financing for Phase II and any future phases will be provided in an amendment or supplement to this Agreement.

SECTION 304: Deleted.

SECTION 305: Commencement and completion of construction of improvements. The Redeveloper agrees for itself, its successors and assigns, and every successor in interest to the Property, or any part thereof, that the Redeveloper, and such successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of the Property through the construction of the improvements thereon, and that such construction shall in any event be begun and completed within the periods specified in Sections 4 and 5. It is intended and agreed that such agreements and covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the agreement itself, be to the fullest extent permitted by law and equity, binding for the benefit of the community and the City and enforceable by the City against the Redeveloper and its successors and assigns to or of the Property or any part thereof or any interest therein.

SECTION 306: Progress Reports. Subsequent to conveyance of Parcel 1 to the Redeveloper and until construction of all improvements has been completed, the Redeveloper shall make reports, in such detail and at such times, as may reasonably be requested by the City, as to the actual progress of the Redeveloper with respect to such construction.

SECTION 307: Certificate of completion.

- (a) Promptly after the Redeveloper notifies the City, in writing, that it has completed the improvements on the Property, the City shall inspect the improvements and if the City determines that the Redeveloper has completed the improvements in accordance with the provisions of this Agreement relating solely to the obligation of the Redeveloper to construct the improvements, the City will furnish the Redeveloper with an appropriate instrument so certifying. The fact that the Redeveloper has secured an occupancy permit(s) pursuant to the building code of the City shall not entitle the Redeveloper to this certificate of completion unless in fact all improvements required by this agreement have been satisfactorily completed. The Redeveloper shall be entitled to a certificate of completion when it has completed all improvements required by this Agreement. The City acknowledges that the redevelopment on the Property will be completed in phases (by Parcel or otherwise), and that the Redeveloper shall be entitled to separate certificates of completion for the different phases of the redevelopment.

- (b) Such certification by the City (and it shall so provide in the certification itself) shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement and in the Deed with respect to the obligations of the Redeveloper, and its successors and assigns, to construct the improvements and the dates for the beginning and completion thereof with respect to the entire Property, or portion thereof covered by such certification, and, if the other agreements and covenants in this Agreement obligating the Redeveloper in respect to the construction and completion of the improvements have been fully satisfied, the City shall forthwith issue its certification provided for in this section. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of a mortgage, or any insurer of a mortgage, securing money loaned to finance the improvements, or any part thereof.
- (c) Upon completion of all elements of the improvements on the Property or with respect to a single Parcel or phase of the Project, except the landscaping, street trees or other similar common areas or facilities, which if incomplete shall not endanger the life or safety of any person who is to occupy a portion of the improvements prior to the issuance of a final partial certificate of completion, as defined below, or unreasonably interfere with access to or everyday use of such space by such person, the Redeveloper may request a partial certificate of completion. If the Redeveloper desires a partial certificate of completion the Redeveloper shall notify the City, in writing, that it has completed at least the necessary part of the improvements and describing the part completed for which it desires such certificate.

Promptly after the City receives such written request for a certificate of partial completion and architect's certificate, the City shall inspect the improvements and if the City determines that the Redeveloper has completed such part of the improvements in accordance with the provisions of this Agreement relating solely to the obligation of the Redeveloper to construct the improvements, the City shall furnish the Redeveloper with a certificate of partial completion so certifying.

Such certification by the City shall be (and it shall so provide therein) a conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and in the Deed with respect to the obligations of the Redeveloper, and its successors and assigns, to construct the part of the improvements covered therein.

The issuance of such certificate of partial completion shall constitute the issuance of a certificate for purposes of Section 505 of this Agreement and thereafter, the Redeveloper may consummate any conveyance, sale, lease or other transfer of all or any part of the improvements to which such certificate of partial completion applies.

Furthermore, after the issuance of such certificate of partial completion and any conveyance, sales, lease or other transfer of all or any part of the improvements covered therein, any exercise by the City of its right to re-enter and take possession of the Property in accordance with Section 704 of this Agreement shall be subject to the rights granted any such purchaser, lessee or transferee (or the mortgage of any such purchaser, lessee or transferee) in the instrument of such conveyance, sale, lease, other transfer or mortgage.

In the event the Redeveloper obtains one or more certificates of partial completion, its obligation to complete the improvements shall not be discharged until the City issues a final certificate of partial completion covering completion (to the same extent required for a certificate of partial completion) of all remaining portions of the improvements not covered in any prior certificates of partial completion. Said final certificate of partial completion shall be, and shall so certify therein, a conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and in the Deed with respect to the obligations of the Redeveloper, and its successors and assigns, to construct the improvements.

- (d) The certifications provided for in this section shall be in such form as will enable each to be recorded at the Redeveloper's expense in the proper office for the recordation of deeds and other instruments pertaining to the part of the Property, including the Deed. If the City shall refuse or fail to provide any such certification in accordance with the provisions of this section, the City shall, within thirty (30) days after written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in adequate detail in what respects the Redeveloper has failed to complete the improvements or part thereof for which a certificate is requested in accordance with the provisions of this agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the City, for the Redeveloper to take or perform in order to obtain such certification.

ARTICLE IV. RESTRICTIONS UPON USE OF PROPERTY

SECTION 401: Restrictions on use. The Redeveloper agrees for itself, and its successors and assigns; and every successor in interest to the Property, or any part thereof that the Redeveloper and such successors and assigns, shall:

- (1) Devote the Property to, and only to, and in accordance with the uses specified in the Urban Renewal Plan; and
- (2) Not discriminate upon the basis of race, color, creed, religion, sex, national origin, ancestry or disability in the sale, lease, or rental or in the use of occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

SECTION 402: Covenants; binding upon successors in interest; period of duration. It is intended and agreed that the agreements and covenants provided in Section 401 hereof shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns, the City and any successor in interest to the Property, or any part thereof, and the owner of any other land (or of any interest in such land) in the project area which is subject to the land use requirements and restrictions of the Urban Renewal Plan against the Redeveloper, its successors and assigns and every successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that the agreement and covenant provided in subsection (1) of Section 401 hereof shall remain in effect until the date specified in Section 6 hereof unless this Agreement provides that a particular covenant expires sooner; and that the agreements and covenants provided in subsection (2) of Section 401 hereof shall remain in effect without limitation as to time: Provided, that such agreements and covenants

shall be binding on the Redeveloper itself, each successor in interest to the Property, and every part thereof, and each part in possession or occupancy, respectively, only with respect to such period as such successor or party shall have title to, or an interest in, or possession or occupancy of, the Property or part thereof. The terms "uses specified in the Urban Renewal Plan" and "land use" referring to provisions of the Urban Renewal Plan, or similar language, in this Agreement shall include the land and all building, and other requirements or restrictions of the Urban Renewal Plan pertaining to such Parcel.

SECTION 403: City rights to enforce. In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreement and covenants provided in Section 401 hereof, both for and in its own right and also for the purposes of protecting the interest of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the City and its successors and assigns, for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City or its successors or assigns has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. To enable the City to determine compliance with these covenants, the Redeveloper and its successors and assigns and tenants hereby grant the City the right, without securing a subpoena, to inspect during reasonable business hours all records and documents of such Redeveloper and its successors, assigns or tenants which may be reasonably related thereto, and should the City reasonably have to apply to court to obtain a subpoena for such records and documents, the Redeveloper or its successors, assigns or tenants, shall be liable for all costs, including litigation expenses and attorneys' fees incurred by the City. The City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in the equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

ARTICLE V. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

SECTION 501: Representations as to Redeveloper. The Redeveloper represents and agrees that its purchase of the Property, and its other undertakings pursuant to this Agreement, are, and will be used, for the purpose of orderly and sound redevelopment of the Property and not for speculation in land holding. The Redeveloper further recognizes that, in view of:

- (a) The importance of the redevelopment of the Property to the general welfare of the community;
- (b) The substantial financing and other public aids that have been made available by law and by the City for the purpose of making such redevelopment possible; and
- (c) The fact that a transfer of a majority interest in the stock or other ownership interest of whatever form (except a limited partnership interest) in the Redeveloper or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in the ownership or distribution of such stock or other ownership interest with respect to the parties in control of the Redeveloper or to their degree of participation, is for practical purposes a transfer or disposition of the Property then owned by the Redeveloper, the qualifications and identity of the Redeveloper, and its stockholders or holders of other

ownership interest (except a limited partnerships interest) are of particular concern to the community and the City. The Redeveloper further recognizes that these qualifications and identity are an important element in the City's decision to select the Redeveloper's proposal and enter into this Agreement.

SECTION 502: Prohibition against transfer of majority interest in shares of stock or other ownership interest of whatever form (except a limited partnership interest); binding upon stockholders or holders of other ownership interests (except a limited partnership interest) individually. For the foregoing reasons, the Redeveloper represents and agrees for itself, its stockholders or holders of other ownership interests, and any successor in interest of itself and its stockholders or holders of other ownership interests respectively, that: Prior to completion of the improvements as certified by the City, and without the prior written approval of the City, there shall be no significant change in the ownership of such stock or other ownership interest of whatever form or in the relative distribution thereof, or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation or other entity, corporate or other amendments, significant issuance of additional or new stock or other ownership interest of whatever form or classification of stock or other ownership interest of whatever form or otherwise. With respect to this provision, the Redeveloper and the parties signing this Agreement on behalf of the Redeveloper represent that they have the authority of the Company and the members to agree to this provision on their behalf and to bind them with respect thereto. The City and the Redeveloper agree that nothing in this Agreement is intended to prevent the Redeveloper from transferring a minority ownership interest in the Redeveloper or from transferring a majority ownership interest in the Redeveloper so long as Steven P. Semingson or Civic Partners, Inc. remains the general partner or manager of the entity developing the Project and so long as such transfer is structured in such a way to ensure the tax exempt status of any bonds issued by the City in connection with the Project.

SECTION 503: Prohibition against transfer of property and assignment of agreement.

Also, for the foregoing reasons the Redeveloper represents and agrees for itself, and its successors and assigns, that:

(a) Except only:

- (1) By way of security for and only for (i) the purpose of obtaining financing necessary to enable the Redeveloper or any successor in interest to the Property, or any part thereof, to perform its obligations with respect to making the improvements under this Agreement, and (ii) any other purpose authorized by this Agreement, and
- (2) As to any individual parts or parcels of the Property on which the improvements to be constructed thereon have been completed; and
- (3) As to any sublease of any individual parts or parcels of the Property to a subdeveloper which is managed or otherwise controlled by the Redeveloper, Civic Partners, Inc. or Steven P. Semingson;

The Redeveloper (except as so authorized) has not made or created, and that it will not, prior to the proper completion of the improvements as certified by the City, make or create, or suffer to be made or created, any total or partial sale,

assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Property, or any part thereof or any interest therein, or any agreement to do any of the same, without the prior written approval of the City except as provided in Section 505 hereof.

The consideration payable for the transfer by the transferee or on its behalf shall not exceed an amount representing the actual cost (including carrying charges) to the Redeveloper of the Property (or allocable to the part thereof or interest therein transferred) and the improvements, if any, theretofore made thereon by it; it being the intent of this provision to preclude assignment of the agreement or transfer of the Property (or any parts thereof other than those referred to in subsection (a)(2) of this Section 503 for profit prior to the completion of the improvements and to provide that in the event any such assignment or transfer is made (and is not canceled), the City shall be entitled to increase the purchase price to the Redeveloper by the amount that the consideration payable for the assignment or transfer is in excess of the amount that may be authorized pursuant to this subsection (b)(4), and such consideration shall, to the extent it is in excess of the amount so authorized, belong to and forthwith be paid to the City.

- (b) The City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval that:
- (1) Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper (or, in the event the transfer is of or relates to part of the property, such obligations to the extent that they relate to such part).
 - (2) Any proposed transferee, by instrument, in writing, satisfactory to the City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Redeveloper under this Agreement and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions, and restrictions to the extent that they relate to such part): Provided, that the fact that any transferees of, or any other successor in interest whatsoever to, the Property, or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this agreement or agreed to in writing by the City) relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit the City of or with respect to any rights or remedies or controls with respect to the Property or the construction of the improvements; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by the law and equity and excepting only in the manner and to the extent specifically provided otherwise in this agreement) no transfer of, or change with respect to, ownership in the Property or any part thereof, or any interest therein, however, consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this

agreement with respect to the Property and the construction of the improvements that City would have had, had there been no such transfer or change.

- (3) There shall be submitted to the City for review all instruments and other legal documents involved in effecting transfer; and if approved by the City, its approval shall be indicated to the Redeveloper in writing.
- (4) The Redeveloper and its transferee shall comply with such other conditions as the City may find desirable in order to achieve and safeguard the purposes of the Urban Renewal Act and the Urban Renewal Plan.

Provided, that in the absence of specific written agreement by the City to the contrary, no such transfer or approval by the City thereof shall be deemed to relieve the Redeveloper, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the improvements, from any of its obligations with respect thereto.

SECTION 504: Information as to stockholders or holders of other ownership interests. In order to assist in the effectuation of the purposes of this Article V and the statutory objectives generally, the Redeveloper agrees that during the period between execution of this Agreement and completion of the improvements as certified by the City, (a) the Redeveloper will promptly notify the City in writing of any and all significant changes whatsoever in the ownership of stock or other ownership interest of whatever form, legal or beneficial, or of any other act or transaction involving or resulting in any significant change in the ownership of such stock or other ownership interest of whatever form or in the relative distribution thereof, or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information; and (b) the Redeveloper shall, at such time or times as the City may request, furnish the City with a complete statement, subscribed and sworn to by the manager or other executive officer of the Redeveloper, setting forth all of the members of the Redeveloper and the extent of their respective holdings, and in the event any other parties have a beneficial interest in such stock or other ownership interest of whatever form their names and the extent of such interest, all as determined or indicated by the records of the Redeveloper, by specific inquiry made by any such officer, of all parties who on the basis of such records own 10 percent or more of the stock or other ownership interest of whatever form in the Redeveloper, and by such other knowledge or information as such officer shall have. Such lists, data, and information shall in any event be furnished the City immediately prior to the delivery of the Deed to the Redeveloper and as a condition precedent thereto, and annually thereafter on the anniversary of the date of the Deed until the issuance of a certificate of completion for all the Property

SECTION 505: Redeveloper's right to prelease or presell part or all of the property. Prior to the issuance by the City of the certificate provided for in Section 307 hereof as to completion of construction of the improvements, the Redeveloper may enter into any agreement to sell, lease, or otherwise transfer, after the issuance of such certificate, the Property or any part thereof or interest therein, which agreement shall not provide for payment of or on account of the purchase price or rent for the Property, or the part thereof or the interest therein to be so transferred, prior to the issuance of such certificate(s). Redeveloper may however, prior to issuance of such certificate, accept earnest money deposits for the sale, lease or otherwise transfer of the Property, or any part thereof.

ARTICLE VI. MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

SECTION 601: Limitation upon encumbrance of property Prior to the issuance of a certificate of completion or certificate of partial completion by the City, neither the Redeveloper nor any successor in interest to the Property or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Property (or in the part thereof to be covered by such certificate of partial completion), whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Property; except for the purposes of obtaining (a) funds only to the extent necessary for making the improvements; and (b) such additional funds, if any, in an amount not to exceed the purchase price paid by the Redeveloper to the City. The Redeveloper shall notify the City in advance of any financing, secured by mortgage or other similar lien instrument, it proposes to enter into with respect to the Property, or any part thereof, and in any event it shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Property, whether by voluntary act of the Redeveloper or otherwise along with name(s) and address(es) of the representative(s) of such mortgage or lien holder(s) to receive notice(s) required by this agreement. The Redeveloper shall cause to be included in any mortgage Agreement a requirement that whenever the mortgagee shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations under such mortgage agreement, the mortgagee shall at the same time forward a copy of such notice or demand to the City at the address shown in Section 7 hereof.

SECTION 602: Mortgagee not obligated to construct. Notwithstanding any of the provisions of this Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by this agreement (including any such holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title to the Property or such part from or through such holder or (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself) shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder; Provided, that nothing in this section or any other section or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in Section 8 hereof.

SECTION 603: Copy of notice of default to mortgagee. Whenever the City shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations or covenants under this Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last address of such holder shown in the records of the City.

SECTION 604: Mortgagee's option to cure defaults. After any breach or default referred to in Section 603 hereof, each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default (or such breach covered by its mortgage) and to add the cost thereof to the mortgage debt and the lien of its mortgage; Provided, that if the breach or default is with respect to construction of the improvements, nothing contained in this section or any other section of this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or

protect improvements or construction already made) without first having expressly assumed the obligation to the City, by written agreement satisfactory to the City, to complete, in the manner provided in this Agreement, the improvements on the Property or the part thereof to which the lien or title of such holder relates. Any such holder who shall properly complete the improvements relating to the Property or applicable part thereof shall be entitled, relating to the Property or applicable part thereof shall be entitled, upon written request made to the City, to a certification or certifications by the City to such effect in the manner provided in Section 307 of this Agreement, and any such certification shall, if so requested by such holder, mean and provide that any remedies or rights with respect to recapture of or reversion or revesting of title to the Property that the City shall have or be entitled to because of failure of the Redeveloper or any successor in interest to the Property, or any part thereof, to cure or remedy any default with respect to the construction of the improvements on other parts or parcels of the Property, or because of any other default in or breach of this Agreement by the Redeveloper or such successor, shall not apply to the part or parcel of the Property to which such certificate relates.

SECTION 605: City's option to pay mortgage debt or purchase property. In any case, where, subsequent to default or breach by the Redeveloper under this agreement, the holder of any mortgage on the Property or part thereof:

- (a) Has, but does not exercise, the option to construct or complete the improvements relating to the Property or part thereof covered by its mortgage or to which it has obtained title, and such failure continues for a period of sixty (60) days after the holder has been notified or informed of the default or breach; or
- (b) Undertakes construction or completion of the improvements but does not complete such construction within the period as agreed upon by the City (which period shall in any event be at least as long as the period prescribed for such construction or completion in this agreement), and such default shall not have been cured within sixty (60) days after written demand by the City so to do, the City shall have the option of paying to the holder the amount of the mortgage debt and securing an assignment of the mortgage and the debt secured thereby, or in the event ownership of the Property (or part thereof) has vested in such holder by way of foreclosure or action in lieu thereof, the City shall be entitled, at its option, to a conveyance to it of the Property or part thereof (as the case may be) upon payment to such holder of an amount equal to the sum of: (i) mortgage debt (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); (ii) all expenses with respect to the foreclosure; (iii) the net expense, if any (exclusive of general overhead), incurred by such holder in and as a direct result of the subsequent management of the Property; (iv) the costs of any improvements made by such holder; and (v) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence and every mortgage instrument made prior to completion of the improvements with respect to the Property by the Redeveloper or successor in interest shall so provide.

SECTION 606: City's option to cure mortgage default. In the event of a default or breach prior to the completion of the improvements by the Redeveloper, in or of any of its obligations under, and to the holder of, any mortgage or other instrument creating an encumbrance or holder of, any mortgage or other instrument creating an encumbrance or lien upon the Property or part thereof, the City may at its option cure such default or breach, in which case the City shall be entitled, in

addition to and without limitation upon any other rights or remedies to which it shall be entitled by this Agreement, operation of law, or otherwise, to reimbursement from the Redeveloper of all costs and expenses incurred by the City, together with interest on such costs and expenses at the highest rate of interest then allowable by law, in curing such default or breach and to a lien upon the Property (or the part thereof to which the mortgage, encumbrance, or lien relates) for such reimbursement; Provided, that any such lien shall be subject always to the lien of (including any lien contemplated, because of advances yet to be made, by) the then existing mortgages on the Property authorized by this Agreement.

SECTION 607: Mortgage and holder. For the purposes of this Agreement the term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien upon the Property, or any part thereof, as security for a loan. The term "holder" in reference to a mortgage shall include any insurer or guarantor of any obligation or condition secured by such mortgage or deed of trust.

ARTICLE VII. REMEDIES

SECTION 701: In general. Except as otherwise provided in this Agreement, in the event of any default in or breach of this agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

SECTION 702: Termination by Redeveloper prior to conveyance. In the event that:

- (a) The City does not tender conveyance of the Property or possession thereof in the manner and condition, and by the date provided in this Agreement, and any such failure shall not be cured within thirty (30) days after the date of written demand by the Redeveloper; or
- (b) On or before the time provided in subsection (g) of Section 5 hereof, the Redeveloper shall furnish evidence satisfactory to the City that it has been unable, after and despite diligent effort, to obtain equity capital and/or mortgage financing for the construction of the improvements on a basis and on terms that would generally be considered satisfactory by builders or contractors for improvements of the nature and type provided in such construction plans, and the Redeveloper shall after having submitted such evidence and if so requested by the City, continue to make diligent efforts to obtain financing for a period of sixty (60) days after such request, but without success.

SECTION 703: Termination by City prior to conveyance.

- (1) In the event that:
 - (a) Prior to conveyance of the Property to the Redeveloper and in violation of this agreement:

- (i) The Redeveloper (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein, or any rights in the Property in violation of Section 503; or
 - (ii) There is any material change in the ownership or distribution of the stock or other ownership interest of whatever form (except a limited partnership interest) of the Redeveloper or with respect to the identity of the parties in control of the Redeveloper or the degree thereof in violation of Section 502.
- (b) The Redeveloper does not submit construction plans, as required by this Agreement, or (except as excused under subsection (b) of Section 702 hereof) evidence that it has the necessary equity capital and mortgage financing, in satisfactory form and in the manner and by the dates respectively provided in this agreement therefore; or
- (c) The Redeveloper does not pay the purchase price and take title to the Property upon tender of conveyance by the City pursuant to this Agreement, and if any default or failure referred to in subsections (b) and (c) of this Section 703 shall not be cured within thirty (30) days after the date of written demand by the City.

Then this Agreement, and any rights of the Redeveloper, or any assignee or transferee, in this Agreement, or arising therefrom with respect to the City or the Property, shall, at the option of the City, be terminated by the City, in which event, the City may proceed against Redeveloper on its guarantee.

- (2) In the event that at any time prior to conveyance of the Property, or portion thereof, the City is enjoined or prevented from conveying such Property, or portion thereof, by any order or decision or act of any judicial, legislative or executive body having authority in the premises, then this Agreement, and any rights and obligations of the Redeveloper, shall be terminated and the City shall return or release the Earnest Money, if applicable, and neither the Redeveloper or the City shall have any further rights against or liability to the other under this Agreement.
- (3) In the event the City shall unilaterally terminate this Agreement of its own volition, other than as set forth in subparagraph (1) above, the City shall reimburse Redeveloper for administering, planning and architectural services incurred between the date Redeveloper was selected by the City and the date of the City's termination.

SECTION 704: Revesting title in City upon happening of event subsequent to conveyance to Redeveloper. In the event that subsequent to conveyance of the Property, or portion thereof, to the Redeveloper and prior to completion of the improvements as certified by the City:

- (a) The Redeveloper (or successor in interest) shall default in or violate its obligations with respect to the construction of the improvements (including the nature and the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within three (3) months (six (6) months if the default is with respect to the date for completion of the improvements) after written demand by the City so to do; or

- (b) The Redeveloper (or successor in interest) shall fail to pay real estate taxes or assessments on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the City made for such payment, removal, or discharge, within sixty (60) days after written demand by the City so to do; Provided, that if the Redeveloper shall provide a bond or other surety or an escrow account in an amount sufficient to pay such tax or assessment or to remove or discharge such lien or encumbrance and shall commence an appropriate action or proceeding to contest the validity or amount of the same before the expiration of said sixty (60) days, it shall be deemed to have made provision; or
- (c) There is, in violation of this Agreement, any transfer of the Property or any part thereof, or any material change in the ownership or distribution of the stock or other ownership interest of whatever form (except a limited partnership interest) of the Redeveloper, or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, and such violation shall not be cured within sixty (60) days after written demand by the City to the Redeveloper; or
- (d) The Redeveloper, in violation of this Agreement, assigns or attempts to assign this agreement or any rights therein or any rights in the Property or improvements thereon for which no certificate of completion has been issued and such violation shall not be cured within sixty (60) days after written demand by the City to the Redeveloper.

Then the City shall have the right to re-enter and take possession of that portion of the Property and to terminate and re-vest in the City the estate conveyed by the Deed to the Redeveloper, it being the intent of this provision, together with other provisions of this Agreement, that the conveyance of the Property to the Redeveloper shall be made upon a condition subsequent to the effect that in the event of any default, failure, violation, or other action or inaction by the Redeveloper specified in subsections (a), (b), (c) and (d) of this Section 704, such failure on the part of the Redeveloper to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in such subsections, the City at its option may declare a termination in favor of the City of the title and of all the rights and interests in and to the Property conveyed by the Deed to the Redeveloper, and that such title and all rights and interests of the Redeveloper, and of any assigns or successors in interest to and in the Property, shall revert to the City; Provided, that such condition subsequent and any re-vesting of title as a result thereof in the City shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the lien of any mortgage authorized by this agreement and (ii) any rights or interests provided in this agreement for the protection of the holders of such mortgages; and provided, further, that after the issuance of a partial certificate of completion and any conveyance, sale, lease or other transfer of all or any part of the improvements covered by such certificate of partial completion (or the mortgaging thereof by any such purchaser, lessees or other transferees), that such condition subsequent and re-vesting of title as a result thereof in the City shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way, the rights granted any such purchaser, lessee, other transferee or mortgagee in the instrument of such conveyance, sale, lease, other transfer or mortgage.

Additionally, in the event of any default, failure, violation, or other action or inaction by the Redeveloper specified in subsections (a), (b), (c) and (d) of this Section 704 or failure on the part of the Redeveloper to remedy, end or abrogate such default, failure, violation or other action or inaction, within the period and in the manner stated in such subsections, the City at its option, and whether or not it exercises its right to re-enter and take possession of the Property or to enforce the completion bond, may declare a forfeiture of the Earnest Money required in Section 2(c) thereof, and thereafter, it shall be entitled to the proceeds of such Earnest Money without any deduction, off-set or recoupment whatsoever.

SECTION 705: Resale of reacquired property; disposition of proceeds. Upon the reversioning in the City of title to the Property or any part thereof as provided in Section 704, the City shall, pursuant to its responsibilities under state law, use its best efforts to resell the Property or part thereof (subject to such mortgage liens and leasehold interests as in Section 704 set forth and provided) as soon and in such manner as the City shall find feasible and consistent with the objectives of such law and of the Urban Renewal Plan to a qualified and responsible party or parties (as determined by the City) who shall assume the obligation of making or completing the improvements or such other improvements in their stead as shall be satisfactory to the City and in accordance with the uses specified for such Property or part thereof in the Urban Renewal Plan. Upon such resale of the Property, the proceeds thereof shall be applied:

- (a) First, to reimburse the City for all costs and expenses incurred by the City, including but not limited to salaries of personnel in connection with the recapture, management, and resale of the Property or part thereof (but less any income derived by the City from the Property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part thereof; any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of reversioning of title thereto in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Redeveloper, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Property or part thereof; and any amounts otherwise owing the City by the Redeveloper and its successor or transferee; and
- (b) Second, to reimburse the Redeveloper, its successor or transferee, up to the amount equal to (1) the sum of the purchase price paid by it for the Property (or allocable to the part thereof) and the investment in the Property by the Redeveloper, including, but not limited to, architectural and legal costs, money expended making any of the improvements on the Property or part thereof and the Redeveloper's budgeted overhead, less (2) any gains or income withdrawn or made by it from this Agreement or the Property.

Any balance remaining after such reimbursements shall be retained by the City as its property.

SECTION 706: Other rights and remedies of City; no waiver by delay. The City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Article VII, including also the right to execute and record or file among the public land records in the office in which the Deed is recorded a written declaration of the termination of all the right, title, and interest of the Redeveloper, and (except for such individual parts or parcels upon which construction of that part of the improvements required to be constructed thereon has been completed, in accordance with this Agreement, and for which a certificate of completion as

provided in Section 307 hereof is to be delivered, and subject to such mortgage liens and leasehold interests as provided in Section 704 hereof) its successors in interest and assigns, in the Property, and the revesting of title thereto in the City; provided, that any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article VII shall not operate as a waiver of such rights or deprive it of or limit such rights in any way; it being the intent of this provision that the City should not be constrained to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved so as to avoid the risk of being deprived of or limited in the exercise of such remedy because of concepts of waiver, laches, or otherwise. No waiver in fact made by the City with respect to any specific default by the Redeveloper under this section shall be considered or treated as a waiver of the rights of the City with respect to any other defaults by the Redeveloper under this section or with respect to the particular default except to the extent specifically waived in writing.

SECTION 707: Enforced delay in performance for causes beyond control of party. For the purposes of any of the provisions of this Agreement, neither the City nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations with respect to the preparation of the Property for redevelopment, or the beginning and completion of construction of the improvements, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to acts of God, acts of the public enemy, acts of terrorists, acts of the Federal Government, acts of the other governmental entities (provided, acts of the City will not excuse delay on the part of the City), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the City with respect to the preparation of the Property for redevelopment or of the Redeveloper with respect to construction of the improvements, as the case may be, shall be extended for the period of the enforced delay as determined by the parties; Provided, that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced delay.

SECTION 708: Rights and remedies cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation under the agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the party.

SECTION 709: Party in position of surety with respect to obligations. The Redeveloper, for itself and its successors and assigns, and for all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under this Agreement, hereby waives, to the fullest extent permitted by law and equity, any

and all claims or defenses otherwise available on the ground of its (or their) being or having become a person in the position of a surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation on the generality of the foregoing, indulgence, or modification of terms of contract.

ARTICLE VIII. MISCELLANEOUS

SECTION 801: Conflict of interests; City representatives not individually liable. No member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the City shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Redeveloper or successor or on any obligation under the terms of this Agreement.

SECTION 802: Equal employment opportunity. The Redeveloper, for itself and its successors and assigns, agrees that during the construction of the improvements provided for in this Agreement:

- (a) The Redeveloper will not discriminate against any employee or applicant for employment because of age, race, color, religion, creed, sex, ancestry, national origin, or disability. The Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.
- (b) The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, age, color, religion, creed, sex, ancestry, national origin or disability.
- (c) The Redeveloper will include the provisions of paragraph (a) and (b) of this section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, so that such provisions shall be binding upon each such contractor, subcontractor or vendor, as the case may be. The Redeveloper will take such action with respect to any construction contract, subcontract, or purchase order as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first three lines of this section shall be changed to read "During the performance of this contract, the contractor agrees as follows," and the term "Redeveloper" shall be changed to "Contractor". To enable the City to determine compliance with these covenants, the Redeveloper and its successors and assigns hereby grant the City the right, without securing a subpoena, to inspect during reasonable business hours all records and documents of such Redeveloper or its successor, assigns or tenants which may be

reasonably related thereto, and should the City reasonably have to apply to court to obtain a subpoena for such records and documents, the Redeveloper or its successors, assigns or tenants, shall be liable for all costs, including litigation expenses and attorney's fees incurred by the City.

SECTION 803: Provisions not merged with Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any Deed transferring title to the Property from the City to the Redeveloper or any successor in interest, and any such Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

SECTION 804: Titles of articles and sections/Exhibits. Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. All Exhibits and attachments referred to in this Agreement are fully incorporated herein.

SECTION 805: Agreement binding on successors in interest. This Agreement shall apply to and bind the successors in interest of the parties.

SECTION 806: Definition of day and extensions for non-working days. Any reference to a number of days in this Agreement shall be to a number of consecutive calendar days. In the event the last date for performing any act required by this Agreement falls upon a weekend day or holiday, then the time for performing such act shall be extended to the first subsequent working day.

SECTION 807: Abutting owners access. During construction, the Redeveloper will not prevent owners of property abutting the Property from having reasonable access to their properties.